



The International Center for Not-for-Profit Law:  
THE CEE/SEE PROGRAM: IMPACT AND POTENTIAL

An Impact Evaluation

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Not-for-Profit Law, Washington, DC

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i. Acknowledgements

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Finally we would like to acknowledge all the Nonprofit Organization (NPO) leaders, government officials, parliamentarians, and other USAID officers who gave of their time, their knowledge, their judgments, and their view of the future. We hope that they will benefit from whatever is true and useful in what we have written in this evaluation.

As with any work of this kind, we would have benefited from more time and more resources to implement a more sophisticated and scientifically sound evaluation research design. Still, with the support of everyone mentioned above, we have made the best possible use of the twenty days available to us for data collection and analysis. If we got it right, it is because of extraordinary intelligence, knowledge and insight of the people we interviewed. For our sins of omission and commission, we are solely responsible.

ii. Glossary

Civil Society

Civil Society is that array of independent not-for-profit organizations that stand between the citizen and the state. It denotes the entire range of private not-for profit-organizations formed by citizens to advance a variety of interests, from aquatic sports to zoological societies. In democratic societies, civil society is considered critical to the performance of several important functions, including monitoring government performance, advocating for public interest policies, insuring accountability and transparency in government actions, and reinforcing bonds of trust, cooperation, and citizen initiative. In USAID terminology, the reference is made to the Civil Society Sector. Sometimes the term not-for-profit sector (NPS) is used. The terminology is still evolving.

Not-for-Profit Organization (NPO)

Not-for-Profit Organization is the widest possible term encompassing all forms of civil society organizations. It is used in this report to refer to non-governmental organizations that are formed and regulated under law.

Cooperative Agreement

A hybrid form of a grant agreement used by USAID to support U.S. based not-for-profit organizations whose activities advance the interests and objectives of USAID and the U.S. Government. A Cooperative Agreement envisions a high degree of USAID involvement in a partnership arrangement.

iii. Acronyms

ABA/CEELI	American Bar Association, Central and East European Law Initiative
BAPP	Baltic American Partnership Program
BCNL	Bulgarian Center for Not-for-Profit Law
CEE	Central and East European (states/region)
CIDA	Canadian International Development Agency
CIS	Confederation of Independent States
CSD	Center for the Study of Democracy
DFID	Department for International Development
DG	Democratic Governance (USAID/DG)
DK	Do Not Know
ECNL	European Center for Not-for-Profit Law
EKAK	Estonian Civil Society Development Concept
EU	European Union
HDZ	Croatian Democratic Union
ICNL	International Center for Not-for-Profit Law
MP	Member of Parliament
NENO	Network of Estonian Nonprofit Organizations
NGO	Non-Governmental Organization
NIS	Newly Independent States of the Former Soviet Union
NPO	Not-for-Profit Organization
NPS	Non-Profit Sector
PIC	Slovenia Legal Information Center
SIDA	Swedish International Development Agency
SOW	Scope of Work
USAID	U. S. Agency for International Development
USG	United States Government
VAT	Value Added Tax

#### iv. Executive Summary

This evaluation report is focused on the role of the International Center for Not-for-Profit Law (ICNL) on the development of legislative frameworks that establish favorable legal rights and procedures for the development of civil society in those countries that emerged from the Soviet socialist system in 1989-1991. ICNL is a Washington DC based not-for-profit organization formed in 1992 with the purpose of providing technical assistance, training, and expertise to countries in transition in Central and Eastern Europe and worldwide. ICNL activities in Central and Eastern Europe have been supported by three cooperative grant agreements with the United States Agency for International Development (USAID) beginning in 1994. These agreements have positioned ICNL as the primary U.S. means for providing expert legal advice, training, awareness raising. ICNL has also been an active counselor in the development of positive not-for-profit (NPO) legislative frameworks in most of the nation states in the region. It has helped build the capacity of the Civil Society Sector to monitor and advance its legislative and policy interests with governments and legislative bodies. This support has been provided as part of USAID's broader democracy development strategy, which includes regional networking among CEE democratic activists and leaders, civil society organizational capacity building, and an array of efforts to strengthen democratic political and governmental institutions and processes.

The purpose of the evaluation was to assess the impact of ICNL's supporting activities with regard to six major questions:

1. How well developed is the legislative framework for civil society and what was ICNL's role in promoting that development?
2. Is there a positive working relationship between NPOs and Government and what has been ICNL's role in promoting that relationship?
3. What is the general capacity of the NPO sector to represent and advocate for the sector's interests in its dealings with government, and how has ICNL contributed to that capacity?
4. Is the NPO sector sustainable, financially and organizationally, following the withdrawal of U.S. assistance, and how has ICNL contributed to that sustainability?
5. What is the general public image of the NPO sector and to what extent has ICNL influenced that image?
6. How do NPO leaders value regional and global relationships and access, and to what extent is ICNL a valued partner in these connections?

These six questions are based on the objectives set out in the USAID-ICNL 2001 Cooperative Agreement. They were further developed through several discussions between the evaluators and USAID and ICNL as clients. The evaluation team also wanted to highlight two additional areas which emerged from discussions with USAID Missions and ICNL during the evaluation.<sup>1</sup>

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1 Although not in the initial draft Scope of Work, discussions with ICNL and USAID resulted in the team addressing two additional questions as numbered: 7) Assess the ICNL assistance strategy in the CEE regional program mode, versus the USAID Mission project sub-contractor approach used in NIS countries; 8) the development of ECNL and BCNL. These questions are stated more fully in the evaluation report.

The evaluation was conducted from October to December 2005, including 20 days in CEE visiting four of the sixteen countries where ICNL has been active, including Estonia, Hungary, Croatia and Bulgaria. The three person evaluation team conducted structured in-depth interviews with NPO leaders selected from two broad groups; those who had direct experience with ICNL, and those who had not but were otherwise NPO activists. Additional written questionnaires were completed by six other USAID Mission experts, as well as other NPO leaders attending the ICNL organized Global Forum on Civil Society Law held in Istanbul in late November 2005.

A first draft was submitted December 10, 2005. Comments were received and a revised Final Draft submitted December 28, 2005.

The key conclusions of the evaluation team are:

- The NPO sector in Central, Eastern and Southeastern Europe has demonstrated considerable development, recognition, and some legitimacy as part of the overall socio-political fabric of many of the nation-states that make up the former socialist bloc. That this has occurred in a scant 16 years, or in the Balkans region, less than 10 years, is a testimony to the commitment of local leadership, and to the stewardship of many donors, including USAID and its implementing partners, as well as several important private foundations and, more recently, the European Union.
- While the first generation of laws for a supportive legislative framework is in place, there are a number of second generation issues that bear especially on the long term sustainability of the sector. As procedures for fee-for-service, government contracts and grants, and membership fees are clarified and become more productive, the public funds now becoming available may become more focused and fairly distributed.<sup>2</sup>
- The evidence also suggests that two elements of a robust civil society will face difficulties as foreign donor assistance (private and public) diminishes. It will become difficult to sustain 1) the independence of the sector as a citizen initiated organizational modality that exists between the citizen and the state, and, 2) the advocacy-monitoring or watchdog function that characterizes many NPOs in the West, especially in North America and Britain. The values of democratic participation, individual initiative and local volunteerism many associate with the civil society role in a democratic polity may well be lost.

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<sup>2</sup> The first generation of laws established multiple legal forms of organization, reduced obstacles to registration, obtained favorable tax concessions or allowed economic activity, and opened political space for activities. Second generation laws relate to new state funding mechanisms, state procurement regulations, volunteer status, and so on.

- We conclude that the hypotheses underlying the ICNL program were in the main correct. The impact of ICNL's assistance is clearly discernable and, in all of the country cases analyzed, may be said to have been a critical factor in the development of a supportive legislative framework for the continued development of the NPO sector and civil society in general. In other dimensions of civil society development, ICNL's impact has been more indirect and subtle.

Our detailed analysis above also demonstrates that ICNL has played an important role with respect to stimulating heightened awareness and expert knowledge of the importance of legislative framework issues.

All respondents agree that establishing a supporting legislative framework is a necessary if not sufficient condition for the development of the NPO sector. USAID and other donors have invested heavily in civil society capacity building more generally, an investment which ICNL has been able to use well in its own efforts to advance the process of passing supportive laws.

The impact of ICNL's activities is consistent with the larger interests of the United States, Europe and other democracies, all of which have a stake in the establishment of democratic polities in the CEE region.

There are five important reasons to maintain some form of ICNL engagement in the CEE/SEE region beyond the withdrawal of USAID Mission based development programs.

1. The legislative agenda is by no means complete. Significant challenges remain, especially in relation to the issue of developing a sustainable NPO sector. ICNL's unique capacity to mobilize information, best practices, and to lend its authority to the legislative development process will continue to be useful.
2. ECNL and BCNL have emerged as the lead organizations for continuing to provide technical assistance, organizational initiative, and training relevant to the further development of NPO legislation and, increasingly, to other aspects of civil society development. ECNL and BCNL as affiliates of ICNL continue to rely on ICNL for a variety of purposes, especially as a window to the broader international experience as well as to that of the United States.
3. Most of the countries of the CEE region have made great progress in establishing the institutions and formal legal frameworks necessary for the formation of a democratic polity. The NPO sector has been a part of this development. There are important challenges that could threaten this progress, among them the emergence of regressive political leaders, subordination of the NPO sector to state interests, and the diminution of the advocacy and watchdog functions performed by many NPOs in other democracies, especially in North America and the United Kingdom. ICNL and its affiliate partners have been active voices for an independent NPO sector, and have developed regional and international networks of experts and committed leaders who share the same values.
4. The development of civil society in CEE and SEE has been influenced by international experience and the special circumstances of emergence from the socialist regimes of the past. The region's NPO leaders, as they move towards becoming an integral part of Europe, recognize that their development experience gives them a special perspective and approach that may be different from that of European not-for-profit sectors. The CEE NPO leaders want to maintain a relationship with each other, to the U.S., and to the global NPO sector on terms that recognize that their experience and a development path that balances state

sponsorship with private sources of funding necessary for an independent sector. ICNL/ECNL/BCNL was almost unanimously desired for continued assistance due to their approach and their ability to bring international standards and interest to bear in a responsive manner. A continuing connection with ICNL is part of a larger interest in maintaining an independent NPO sector that can effectively monitor government, advocate for public interest issues, as well as becoming more professionally competent providers of needed public services.

5. Having invested heavily in civil society as part of the overall fabric of a democratic society and polity, all democratic governments and private foundations have, or should have, a public interest in finding ways to maintain that investment and enable citizens to participate in its benefits over the long haul.

The team has three recommendations. To implement them will require policy dialogue within USAID, and with the Department of State, the National Security Council, and the Congress. They will also require a dialogue and active partnership with other democracies, especially in Europe.

At issue here are two concerns that motivated this evaluation from the beginning. First, has the USAID investment in ICNL and other civil society development efforts produced sustainable results of a character consistent with the model of civil society as an independent third sector? We have concluded that the answer is “yes, but.” Second, is it in the broader interest of most first world democracies to participate through ICNL and related organizations in the further development of civil society in the emergent states of Eastern Europe as well as the NIS, and other regions struggling to create viable democratic polities?

Our recommendations reflect our answers to these questions.

1. ICNL and its affiliates should be retained through some sort of CEE and NIS region-based mechanism, whether through the USAID Europe and Eurasia Bureau, a special ICNL line item in the State Department appropriation,<sup>3</sup> or a Private-Public Trust or Foundation that would earmark funds for this purpose. For relatively modest funding, ICNL and its European affiliates would be able to maintain access to NPO leadership throughout the region, and, with its affiliates, continue its highly efficient responsiveness and participation in the further development of a robust and independent NPO sector. The Assistant Administrator for the USAID E&E Bureau testified to Congress in 2004 that:

“...occasionally, funding for future program impact will be sought after Missions close to ensure the sustainability of gains made during USAID presence. Such legacy mechanisms include partnerships with US private sector institutions and other programs that do not require large amounts of recurrent funding or USAID administration.”

ICNL fits this criterion. USAID’s regional program approach for ICNL’s activities is an efficient and flexible model for providing the type of assistance that is still needed.

2. The United States and the EU should work with private foundations to establish an International Civil Society Partnership Foundation or similar modality for the purpose of

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<sup>3</sup> The Asia Foundation receives core funding in this manner, in addition to being awarded cooperative agreement grants from USAID.



providing financial and, where needed, technical support to the continuing development of NPO sectors, the withdrawal of formal foreign donor assistance notwithstanding.

Maintaining and deepening democratic institutions, behaviors and values should be a long term commitment for those nations that have already invested so much in bringing the democratic nation building process this far. Supporting an independent, participatory and public interest orientation of the NPO sector is a critical part of this challenge.

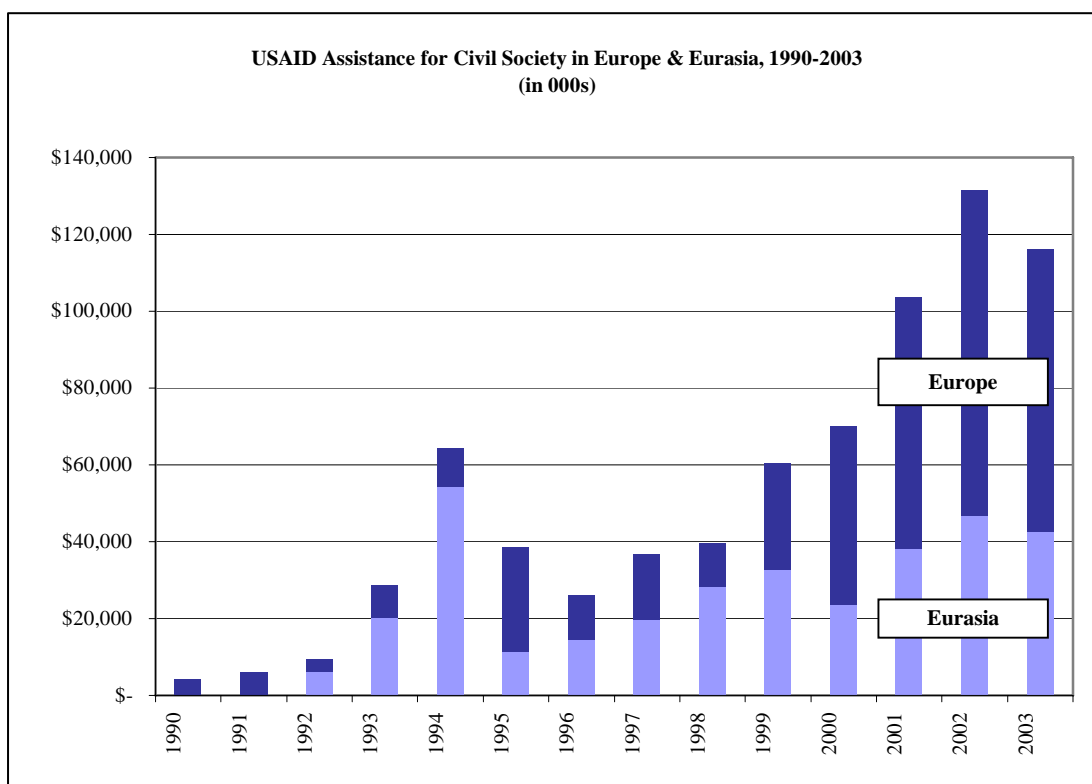
3. ICNL, perhaps in tandem with several other U.S. and European democracy organizations, should be encouraged to expand its activities into other regions where civil society legislation is lacking, weak, or non-supportive. The increase in threats to civil values and democracy are found in the increasingly sophisticated organizations and operations that threaten the integrity and very existence of smaller nation states, not only in the CEE/NIS region, but in the Mid-East, Africa and Southern America. Organized civil society is one of the potential bulwarks standing against corruption, trafficking, money laundering, and terrorism. Strengthening civil society is in the interest of democracies world wide. ICNL has identified and developed the knowledge and the legal experts who have valuable technical experience which can be shared with other regions of the world.

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## Introduction

In those countries formerly part of the Communist bloc backed by Soviet power, following the transition of 1989-1992 the commitment to establishing functioning democratically elected governments was strong but experience with the institutions, practices, and relationships between different groupings that make up the democratic body politic was weak. Civil society, or the multitude of social organizations that are created by citizens independent of state control, was very much in its infancy, and not well understood by those in government or by many political leaders. And although the impulse to form civil society organizations quickly manifested itself, there was little knowledge or practical experience by the leadership of these organizations about the essentials of how to establish, operate, and build support in a constituency that would sustain the organizations' work. U.S. Agency for International Development (USAID) assistance for the development of civil society has a long history that goes back to private voluntary organization projects in the 1970s directed toward agricultural development. For the post-communist states, though, this assistance essentially begins in 1990 and was part of a trend toward support focused



more on the civil society sector as a part of the democratic polity and society. USAID continues to support civil society organizations as a means of service provision in the health sector especially. U.S. foreign assistance in support of civil society in post-communist states dwarves that of all other official donor assistance combined: according to statistics from the OECD for 1990-2003, over 75% of such programming was funded by the U.S. government, with the vast majority of the remaining amount coming from SIDA, CIDA, and other Nordic development agencies. The table above shows the level of USAID funding during the same time period for Europe and Eurasia. A recent econometric study of the impact of USAID DG assistance globally

found that civil society funding had a significant contemporaneous effect on the development of democracy, and in addition that such funding had significant contemporaneous and lagged effects on a composite measure of civil society development (Finkel, Perez-Linan, and Seligson, 2005).

### ICNL and the Challenge of Emerging Civil Society

ICNL was founded in 1992 to promote the enabling environment for civil society and civic participation, and ICNL received its first significant funding in 1994. Specifically, ICNL sought to provide legal technical assistance to governments and the emerging civil society sector in the former socialist regimes of Eastern Europe and elsewhere.

A key constraint to the development of civil society was the absence of an appropriate, democratic legislative framework for the establishment, registration, and functioning of not-for-profit associations and foundations. Most of the emerging democracies in Central and Eastern Europe were operating under laws and regulations promulgated during (and sometimes before) the communist period. These very much reflected the party/state philosophy of party led mass mobilization organizations common to the socialist regimes elsewhere. Social organizations that were permitted after the transition period were for the most part, older social service organizations such as the Red Cross, or those which “represented” large economic and social sub-sectors such as the Union of Journalists or the Association of Disabled Persons. These organizations continued to function and generally have continued to enjoy subsidies from the state. On the other hand, new organizations that emerged around issues of human rights, environment, or anti-war issues found themselves on much shakier legal and political grounds. As new forms of social organization began to emerge, these too faced a legal regime not in synchronization with the idea of an independent civil society sector. Clearly, if civil society was to develop in all its many manifestations, legal reform was a necessary condition and a good place to start.

USAID signed its first Cooperative Agreement with ICNL in 1994 providing essential financial support to ICNL in order to expand its work throughout the Central and East European (CEE) region. Subsequent Cooperative Agreements were signed in 1998 and 2001, further expanding ICNL’s program into the Balkans. ICNL has been actively engaged in the development of 40 laws supporting NGO activity and has been a participant in efforts to modify or defeat restrictive laws in Albania, Armenia, Bosnia-Herzegovina and elsewhere. More recently, ICNL has been an implementing partner in Rule of Law programs in Serbia and Montenegro, Tajikistan, and Uzbekistan.

A key feature of these agreements with USAID was the “regional program” framework. By 1995/96, USAID was shifting most of its economic, social and democratic governance programs to Missions, following the model used by USAID in other parts of the developing world. Missions would determine their development strategies and negotiate contracts and agreements directly with various implementing organizations to carry out the Mission’s strategy. However, USAID continued to operate several regional programs out of Washington. In August 2002, USAID shifted management responsibility for 17 activities to its regional office in Budapest. One of the transferred activities was the NGO Legal Networking Initiative, which supported the work of ICNL.

At the regional level, ICNL is supporting regional educational initiatives to introduce not for profit law into legal studies curricula and has established an electronic library on NPO law. ICNL annual reports state that a regional network of educators knowledgeable about NPO law has been established, and that some 400 students in nine CEE and NIS countries receive training in not-for-profit law.<sup>4</sup> This work is supplemented by key publications, including the results of two surveys of tax laws effecting NGOs in the NIS and CEE region.

By staying with the regional program approach for ICNL, USAID encouraged and enabled ICNL to support cross border and regional interchange and relationships between and among leaders of the emerging civil society sector, especially with regard to learning about legal regimes that facilitate and support the development of civil society organizations as practiced in the United States and in Europe. A second major feature of ICNL's support from USAID was that it allowed ICNL to follow a flexible time table for providing technical assistance to law makers and not-for-profit (NPO)<sup>5</sup> leaders who were beginning to grapple with the task of creating a more appropriate legislative framework for civil society. Rather than impose a supply driven timeframe for action, ICNL was given the latitude to be responsive to the emergence of opportunities for rapid movement, often after a new and more liberal set of leaders was elected. The more quiescent periods leading up to a burst of legislative activity were filled with knowledge and awareness building by ICNL. This same flexibility has permitted ICNL to help with technical expertise when regressive legislation has been proposed, as in Slovakia during the 1990s.

ICNL developed a rather distinctive approach to providing technical assistance under USAID's supportive cooperative agreement. The underlying principle of this approach was to do everything in a manner that would promote local ownership and responsibility for whatever actions were taken, and for whatever laws were ultimately put in place. The persistent adherence to this principle required a rather different operational code than that found in the usual USAID project. An important characteristic of this arrangement was the absence of an institutional presence in the countries with which ICNL worked. This meant that ICNL took an intentionally backseat role in the process which it sought to drive – as one NPO respondent in Hungary noted, “ICNL and ECNL have played a significant role in helping MPs have access to materials and new ideas but this means that they get no public credit for their work. If something is successful, MPs take credit for it.” ICNL's approach, to oversimplify, can be described as having three distinct, sometimes overlapping phases:

1. The Interest Generation Phase: involving initial contacts followed by seminars, workshops, and training sessions for all potential leaders, including government administrators, parliamentary and political leaders, and local NPO leadership. Here ICNL acts as an expert international partner, presenting different ideas, legal solutions, and best practices drawn from a variety of countries. In time, more and more solutions were drawn from CEE countries that had already made progress in establishing a suitable legislative framework.
2. The Negotiating Phase: when an election or some other political change created a political leadership willing to move forward on NPO legal reform, ICNL would increase the tempo and intensity of its involvement, building on the relationships and political capital already

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<sup>4</sup> See, for example, International Center for Not-for Profit Law USAID Semi-Annual Report, June 2005, pp 1-10.

<sup>5</sup> This report uses the term, “not-for-profit” (NPO) to refer to non-governmental organizations of all kinds, including those who operate fee for services benefits.

created during the Interest Generation Phase. ICNL would assist in preparing draft laws, commenting on alternative drafts, and, most important, using their good offices to facilitate and broker the compromises necessary to finding agreement on an acceptable draft. Sometimes this phase involved many intense visits to the country, arranging meetings, keeping the momentum going, and counseling all parties to work out reasonable compromises.

3. The Implementation and Refinement Phase: Laws passed do not mean laws are necessarily well implemented or not need further refinement and amendment. Sometimes the political winds shift toward more regressive leadership, threatening the gains made during the negotiating phase. In addition, legal development should be an evolutionary process, and the law should be revised from time-to-time to take into account current conditions. ICNL's engagement, accessibility, and both published and personal guidance are often called on to provide support to progressive elements in the NPO and the political leadership groups resisting authoritarian and statist tendencies.<sup>6</sup>

These phases are linked by ICNL's more or less constant development of a network of local and international experts, and by its efforts to build local NPO leadership, skills and knowledge.

Under the three cooperative agreements with USAID, ICNL has been able to provide technical assistance and awareness building, training, and facilitation in 16 territories or entities<sup>7</sup> in Central and Eastern Europe. In addition to hands-on technical assistance in legislative drafting and development, ICNL has been working with universities to encourage classes on not-for-profit law in law schools. In some cases, such as at the Central European University in Budapest, ICNL actually has staff teaching the courses. Suffice it to say here that ICNL, along with other U.S.-based USAID partners, have been very active and influential in helping the sector to develop in a rather short period of 16 years since the fall of the Berlin Wall.

#### ICNL's and USAID's Program Theory

Underlying any set of purposeful interventions into existing social, political and economic arrangements and practices is a more or less complex theory of change. This theory sets out the plausible causal relationships between a current undesirable condition, problem or constraint, and the intervention's actions which are intended to correct the situation. Although the program theory of a particular intervention is rarely made explicit in the original design documents, there is, nevertheless, some hypothesized set of expectations about **what will work and why** in the minds of the designers, funding organizations, and implementers of a program.

#### ICNL Program Hypotheses<sup>8</sup>

- a. An adequate legal framework is necessary to the development of a robust civil society.
- b. A robust and sustainable civil society is a critical ingredient of a liberal democratic polity.<sup>9</sup>

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<sup>6</sup> For example, the Russian Duma is considering legislation that would, among other things, restrict or eliminate foreign donor financial support for any Russian Not-for-profit organizations. ICNL has been responsive to requests to provide comment on these draft laws from the perspective of US and western best practices generally.

<sup>7</sup> The term "entities" includes nation states and special territories such as Kosovo and Montenegro.

<sup>8</sup> These hypotheses have been developed by the evaluation team based on review of documents and discussions with ICNL and USAID.

- c. A healthy democratic polity among former communist regime states is in the interest of the local citizenry, the U.S., Europe, and the international community.
- d. Political leaders, governments and civil society leaders understand the relationships between civil society and democratic governance and are increasingly engaged in revising the legislative framework for civil society.<sup>10</sup>
- e. ICNL has a unique comparative advantage in the provision of technical assistance in the development of NGO legal frameworks for two reasons: first, it is able to speak with authority based on knowledge, analysis and experience, and second, it provides assistance in a manner that enhances the client's ownership of the outcomes, as well as the capacity to cope with the inevitable new issues that will arise requiring development of new laws and regulations.
- f. ICNL's sharing of international perspectives and practices with governments and civil society leaders will be relevant to their search for appropriate models and principles which can guide preparation of a legislative framework.
- g. The development of regional networks among NPO leaders will provide opportunities for information sharing, mutual learning, and political support for the NPO sectors continued development.

USAID, by supporting a regional program modality for ICNL, will allow it to maximize timely and efficient interventions fitted to the conditions of the various countries, while keeping program and operating expense costs at a low level. USAID Missions will see the value of this approach, and provide additional "buy ins" as needed for bilateral targeted assistance.

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<sup>9</sup> The term "liberal democratic polity" encompasses a wide range of participatory forms, including civil society, political parties, free and fair elections, a free press, and the rule of law.

<sup>10</sup> Not all democratically elected regimes support an independent civil society. In the absence of such support, ICNL by itself can do very little to 'force' positive legislation. Working with a strong local network of NGO sector leaders, ICNL can, and does play a strong supporting role in efforts to stop regressive legislative proposals.

## **Purpose, questions, methodology, data sources and team**

### Purpose

The purpose of the evaluation is two fold: first, to assess the impact and value added of the ICNL assistance approach to the development of the not-for-profit sector in Central and Eastern Europe; second, to assess the need for and utility of a continued relationship between ICNL, its affiliates, the European Center for Not-for-Profit Law (ECNL) and the Bulgarian Center for Not-for-Profit Law (BCNL) and the states of Central and Eastern Europe, especially those entering the European Union.

The Scope of Work (SOW) for this evaluation poses the following key questions relevant to the 16 entities where ICNL has been active under the three USAID Cooperative Agreements. To facilitate the research and report preparation process, the SOW questions have been reformulated and differ somewhat from the SOW text found in Annex I.<sup>11</sup>:

1. How well developed is the legislative framework for civil society and what was ICNL's role in promoting that development? (SOW IV.3.d.)
2. Is there a positive working relationship between NPOs and Government and what has been ICNL's role in promoting that relationship? (SOW IV. 3.c.)
3. What is the general capacity of the NPO sector to represent and advocate for the sector's interests in its dealings with government, and how has ICNL contributed to that capacity? (SOW IV. 3.c. and 3.d.)
4. Is the NPO sector sustainable, financially and organizationally, following the withdrawal of U.S. assistance, and how has ICNL contributed to that sustainability? (SOW IV. 3.a. and 5.)
5. What is the general public image of the NPO sector and to what extent has ICNL influenced that image? (SOW IV. 3.b and 6.)
6. How do NPO leaders value regional and global relationships and access, and to what extent is ICNL a valued partner in these connections? (SOW IV. 1, and 2)

These six questions are based on the objectives set out in the USAID-ICNL 2001 Cooperative Agreement. They were further developed through several discussions between the evaluators and USAID and ICNL as clients. The evaluation team also wanted to highlight two additional areas which emerged from discussions with USAID Missions and ICNL during the evaluation.

7. Assess the ICNL assistance delivery strategy in the context of the USAID CEE Regional Program modality, versus the Mission Project Sub-contractor modality used in other countries. (SOW IV. 2.)
8. To what extent have the ICNL affiliates, ECNL and BCNL developed their own institutional identities and program agenda?<sup>12</sup>

The SOW also directs the evaluation to look forward (prospective) as well as backwards (retrospective) at the results and impact of the variety of ICNL assistance programs throughout

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<sup>11</sup> Reference points to the SOW questions in Annex I are included in parentheses above.

<sup>12</sup> Discussion with USAID and ICNL raised the issue of USAID's 'legacy', which is a more general USAID concern throughout the region as assistance programs are coming to an end.



the region. The team decided in the interests of keeping the report within reasonable length to combine these two ‘looks’ in each of the major sections, as well as in the conclusions and recommendations.

The evaluation team was unable to develop credible evidence for one question in the SOW, question 4: “How and to what extent have the Cross Border Initiatives contributed to a stronger NGO sector in the NIS states, and to development of a regional support and information sharing network?” At the outset the team hoped to use information gained during an ICNL sponsored conference in Istanbul to answer this, but the team determined that they were unable to approach the NIS with the methodological rigor to make valid generalizations for such a diverse region.

### Methodology

The basic evaluation design used is a mixed method country comparison design which includes the following elements:

- Four countries where ICNL had been active, Estonia, Hungary, Croatia, and Bulgaria, were visited for more in-depth discussions with government and NPO leaders. These four countries were chosen by USAID in collaboration with ICNL. Croatia and Bulgaria were chosen because ICNL received the highest amount of USAID resources for these countries. Estonia was chosen because it was the first country to have graduated from USAID assistance, and therefore was a key country in which to assess ICNL’s legacy. Hungary was chosen because USAID’s Regional Services Center, ICNL’s Regional Office, and ECNL are based in Hungary. In addition, each of the four countries has experienced different post-communist developments, a point that should be kept in mind while reading this entire evaluation. Estonia made a clear break with the past Soviet regime, and embraced political and economic liberalism enthusiastically with an eye toward the EU. Estonia has had less trouble with the legacy “hangover” of communist-era civil servants than other states in the region. The country has enjoyed a strong environment of consensus and participatory politics. Hungary’s transition from the previous regime meant a much larger presence of legacy bureaucrats and approaches, while stalled economic development and the EU accession process provided new impetus for an active state. Croatia’s involvement in the Yugoslav conflicts of the mid-1990s and the development of a Tudjman’s nationalistic soft authoritarian regime resulted in a highly politicized state and highly polarized society. Bulgaria’s halting political and economic transitions has been such that change has come only gradually and recently.
- A comparison case country (Slovenia) which has not received ICNL assistance (a very modest program ended in 1995) was visited and key informant interviews were conducted. Moreover, in terms of (a) the rapidity of political and economic change, (b) population size, and (c) relationship within the former regime, Slovenia is quite comparable to Estonia; in terms of its historical legacy, it is also comparable to Croatia.
- Mixed method non-random qualitative/quantitative interviews with NGO leaders drawn from two lists: those persons with extensive knowledge of ICNL (A List), and NPO leaders who had no interaction with ICNL (B List) but were sufficiently well established to be familiar with the legislative framework within which they must operate.

- Key informants were asked to rate overall level of development for each SOW question on a 1 – 10 (highest) scale.<sup>13</sup> These rankings and evidence from the qualitative data from key informants constitute the essential evidentiary base for this evaluation.
- A questionnaire was completed by 16 persons from other countries not visited by the team who were attending the ICNL sponsored Global Forum on Not-for-Profit Law.<sup>14</sup>
- Additional interviews and group discussions were held at the ICNL Global Forum.
- USAID Mission assessments of ICNL's performance were provided through an additional questionnaire sent to six Missions in the region not visited by the evaluation team. The completed questionnaires buttress the main findings, and add an additional perspective.
- Indices of NPO legislative framework, USAID financial investment, and NPO Sector development generally were drawn from the ongoing research project by Dr. Green. Quantitative data and other ratings of civil society and NPO legislative development provided by USAID and ICNL were used to provide broader context and support for qualitative findings. In all, over the course of 20 calendar days, the three person evaluation team conducted intensive interviews with 78 NPO, Government and donor informants in five countries; collected additional information from five individual interviews and one group discussion and received 35 completed questionnaires from participants at the ICNL Global Forum, as well as gathering USAID Mission assessments using a questionnaire received from six USAID Mission CTOs.

#### Threats to Validity

Every evaluation study conducted over a short period of time contains potential threats to the validity of the evaluation team's findings and conclusions. Evaluation, 'to fix the value of' is necessarily an exercise in judgment informed by facts and analysis. In this study, our final conclusions are formed by the findings we came to using the data collection methods available to us. While every effort was made to correct for bias, there are inevitable shortcomings that must be recognized:

1. No time was available to visit NPOs outside the metropole, although in most countries at least one NPO outside the city came in for an interview or conducted one with the team by telephone.
2. USAID has graduated its assistance programs to Estonia and Hungary. In Croatia and Bulgaria, the imminent phase-out of USAID funding and U.S. involvement creates fear among some NGOs who have enjoyed U.S. support in the past. This may influence responses about the need for a future relationship.

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<sup>13</sup> Statistical analysis of the responses by key informants demonstrated the utility of the six aspects. Cronbach's alpha was .79, indicating that the six aspects did indeed correlate highly and functioned well as a group. Factor analysis (varimax rotation) identified two components: NGO-state partnership, sustainability, public image, and regional connectivity; and legislative framework and capacity; this was further evidence that the six cohered well and could reasonably be used for evaluation.

<sup>14</sup> Questionnaires returned from the following countries: Armenia, Bulgaria, Latvia, Macedonia, Moldova, Romania, Russia, Serbia/Montenegro, Slovakia, Slovenia, Ukraine, Uzbekistan

3. The questionnaires completed by participants at the ICNL Global Forum in Istanbul produce somewhat softer data than the in-depth interviews and rankings. The limited number of respondents per country (1 or 2) precluded generalization on a country by country basis.
4. The rankings and qualitative discussion reflect the views of knowledgeable local experts (the A list) and local NPO activists who function within the legal framework as they know it. Their views might not match up exactly with rankings provided by ICNL/ECNL/BCNL or other legal experts. However, the team is convinced that the rankings in general reflect well the operational legal conditions within which the NGO sector must operate in each country visited as well as the impact of ICNL assistance activities.
5. All three members of the evaluation team, though experienced social researchers, are generally sympathetic to and have been engaged in USAID and other supported efforts to establish civil societies in the CEE region. Although every effort was made to avoid response bias, it should be clear what our values are.

The level of team confidence in the report's findings, especially regarding the legislative framework and ICNL's role, is fairly high. The team believes that additional research days would not yield corresponding increases in the validity of the findings. A much more sophisticated evaluation research design, at higher cost in time and resources, might produce a more rigorous analysis.

#### Team

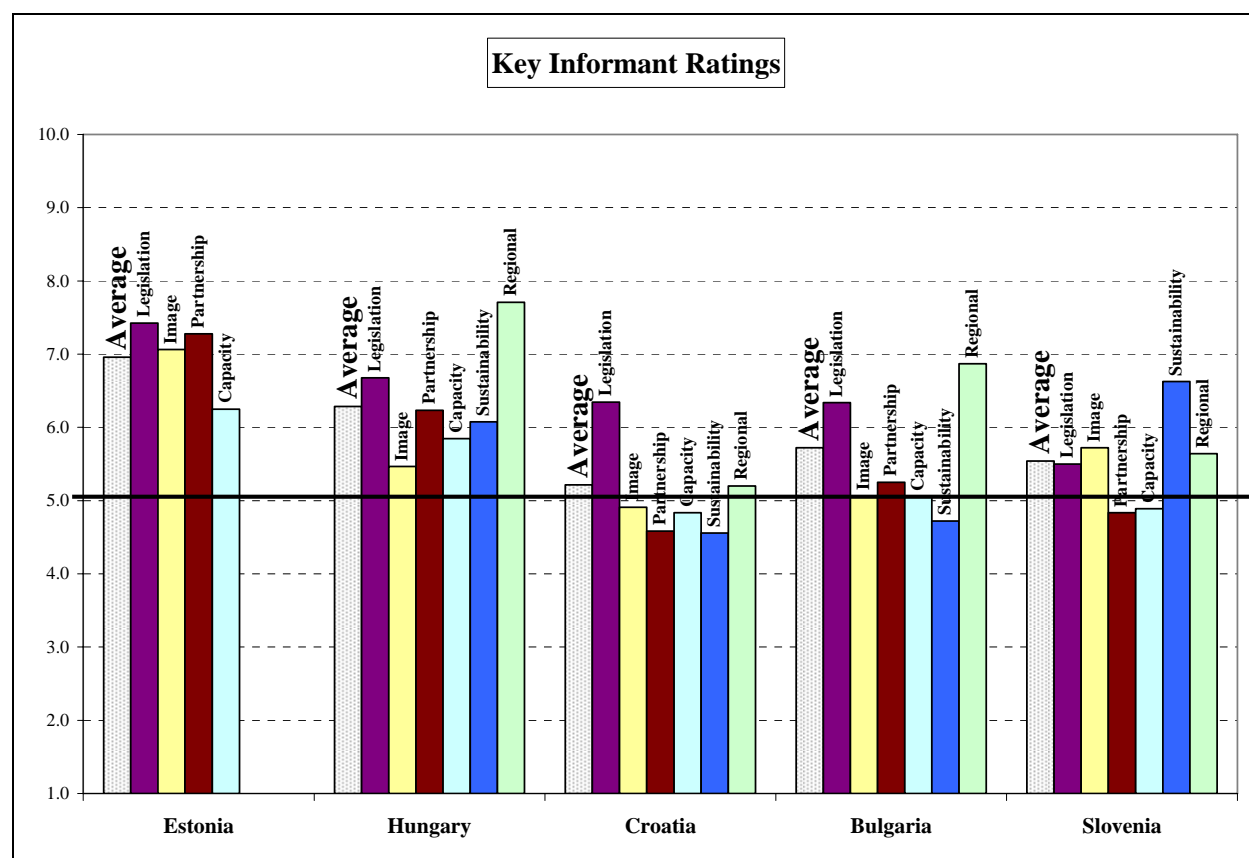
The evaluation team was composed of three very experienced researchers with different but complementary backgrounds. Dr. Richard Blue, the Team Leader, is a retired USAID Senior Foreign Service officer with a long history of evaluation research and foreign assistance programming, especially with regard to civil society and rule of law development. Mara Galaty is currently a Senior Democracy Advisor to the USAID Europe and Eurasia Bureau, with extensive experience in civil society development in Central and Eastern Europe. She is fluent in Bulgarian. Dr. Andrew Green is a Senior Democracy Fellow in the USAID Democracy and Governance Office, responsible for completing a major long term quantitative analysis of USAID's efforts to promote democratic development, and is an expert on NPO law as well as civil society development generally.

## Findings

Civil society has shown considerable development since 1990, and although most of the “northern” tier was well-developed by about 1997, the “southern” tier has been a place of change since 1997 while the former Soviet states of the CIS have experience slow and halting change.

The report presents findings in varying degrees of detail. In the team’s view, the critical issues that should be addressed are: 1) legislative framework, 2) sustainability, 3) NGO-Government Relationship, 4) NGO Capacity, and 5) Regional Connectivity. We see the evaluation of ICNL’s impact on legislative development as the most critical, and have provided country by country evidence.

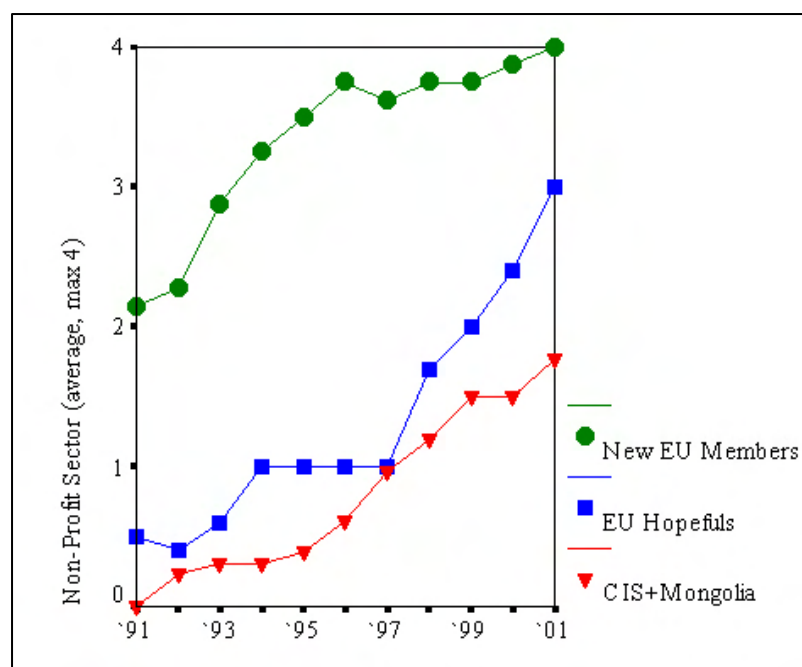
The table below show the ratings in each of the four ICNL-program countries for the six aspects (note that sustainability and regional connectivity was added after the team’s visit to Estonia), as well as the overall average. All of the ratings for Estonia and Hungary are above the “neutral” score of 5, while those for Croatia and Bulgaria include some in the negative region. Note that the legislative framework is the most consistent performer among the six aspects. Slovenia has been added to this table for comparison purposes; note especially the rating for the legislative framework.



## Legislative Framework

### Overview

Each of the four ICNL-program countries has developed a generally good framework of first generation laws<sup>15</sup> for the nonprofit sector, although as noted earlier each has experienced diverse post-communist developments. Nonprofit sector legislation has indeed improved markedly in the last 10 years, although at different rates in different regions. The graph below shows what had been a significant framework gap between new European Union (EU) member states (including Estonia and Hungary), EU hopefuls (including Croatia and Bulgaria), and the NIS.<sup>16</sup> Note how the gap between the new EU members and the EU hopefuls closes rapidly after 1997, and there has been considerable positive development among the latter set since 2001.

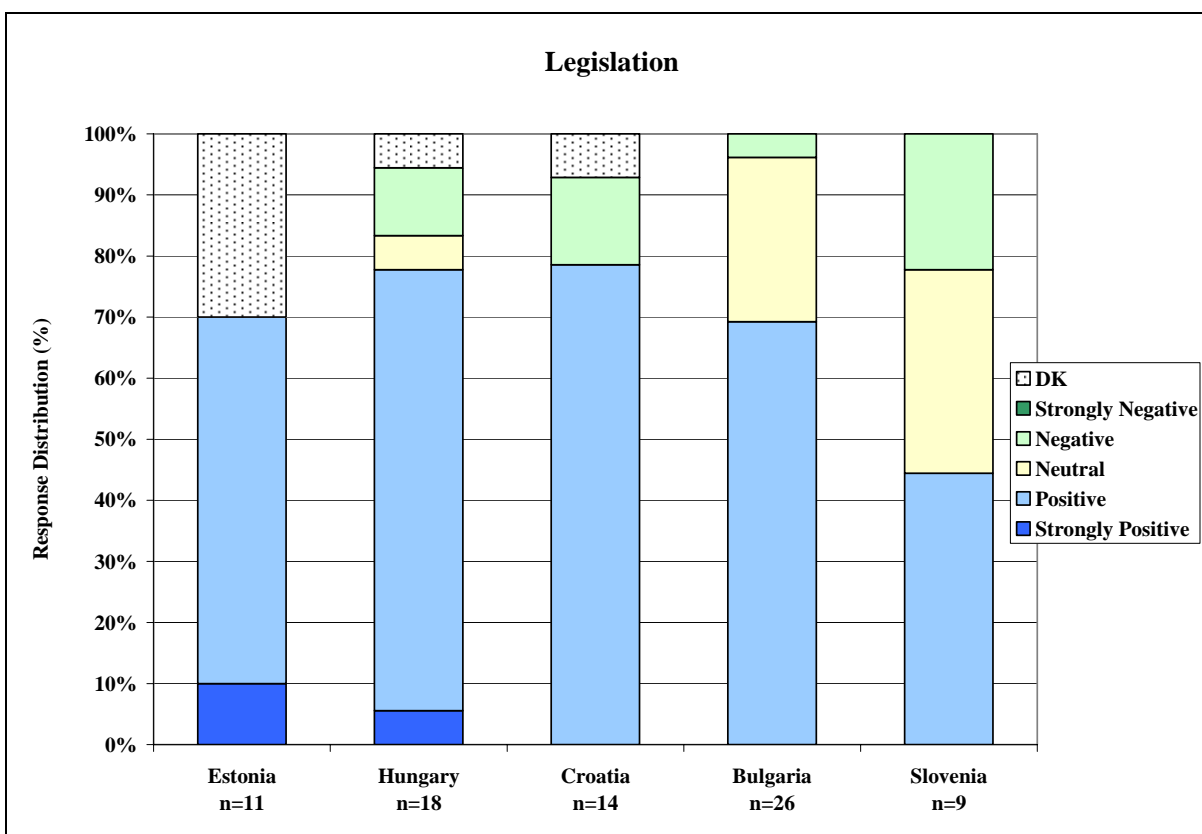


Key informants similarly rated the countries' current frameworks highly. As seen in the table below, overwhelming majorities in all four ICNL-program countries thought the legislative framework was positive or strongly positive, with only small minorities holding negative opinions. It is also worth noting that the positive ratings outweigh the negatives by over 60% in each of the four countries. Looking to Slovenia, a non-ICNL-program country, the legal

<sup>15</sup> The first generation of laws established multiple legal forms of organization, reduced obstacles to registration, obtained favorable tax concessions or allowed economic activity, and opened political space for activities. Second generation laws relate to new state funding mechanisms, state procurement regulations, volunteer status, and so on.

<sup>16</sup> The NPS indicator of nonprofit sector legislation in 26 post-communist states for 1991-2001 is scored according to diversity of legal organization forms, ease of registration, availability of tax concessions and allowed economic activity, and the ability to act politically (Green 2002, 2004); scores run from 0 (worst) to 4 (best), and each point in the graph represents the average for countries in each set.

environment is much less valued in absolute and relative terms, with only about 20% more positives than negatives.



This finding was mirrored to a large extent by the Istanbul questionnaire, but the USAID questionnaire exhibited slightly more positive attitudes. The gap between the Newly Independent States (NIS) and Europe was not seen in the Istanbul questionnaires, though, and comments from each set of respondents indicated a wider definition of “positive” than in the key informant responses.

### Findings

There is plenty of empirical evidence to support the positive responses in each of the four countries, with one exception that will be noted along the way. This section will discuss legislative development in each country and ICNL’s involvement in the process of change.

#### *Estonia*

- **Registration Framework:** The first development of nonprofit law in Estonia was the 1994 Law on Non-Profit Associations, which allowed for extensive state control over associations and did not allow for the formation of foundations. Subsequently, however, the 1995 Foundations Act created the organization type and greatly eased the process for establishment. Of greater importance for the development of civil society was the 1996 Nonprofit Associations Act, which is one of the most liberal laws in Europe in allowing for only two founders and registration at the local level.
- **Tax and Funding Framework:** Income tax and VAT concessions were granted in a 1994 law, but had no real effect until the 1995 and 1996 laws came into effect. Changes were

made to income tax and VAT concessions in 2000, and a portion of taxes from alcohol, tobacco, and gambling are earmarked for distribution to the sector by a parliamentary body. Finally, the 2003 Law on Obligations allowed informal (i.e., unregistered) associations to have sufficient legal personality to contract with local government for service provision.

### *ICNL's Role*

ICNL's involvement in these positive developments has been deep. ICNL consulted extensively beginning in 1995 with a new MP on the Law Committee (Daimar Liiv), who drafted and introduced both the Foundations Act and the Nonprofit Associations Act. Later changes to income tax and VAT concessions stemmed as much from ICNL's training of new public officials in the tax policy unit as from discussions begun in 1995. Similarly, the 2003 obligations law is "directly traceable" to advice offered in the mid-1990s.

ICNL's influence has been direct and indirect. One informant stated that "ICNL never imposed programs, they were excellent process-moderators," and another that they were "context-driven" and "responsively provided materials and comparative analyses." There are naturally still some issues to be addressed in the Estonian legal framework, but there is a functioning mechanism for this: the "compact," or EKAK,<sup>17</sup> signed by nonprofit sector leaders and the government, clarifies the roles, expectations, and dialogue processes between the two sides.

### *Hungary*

Unique among post-communist states, Hungary had functioning laws on foundations and associations at the time of transition. The pace of legislation picked up in the mid-1990s, however, with a series of measures that significantly changed the nature of Hungarian civil society.

- **Registration Framework:** The first change was an amendment to the Civil Code in 1994 that enabled the formation of public foundations, which allowed for the spin-off of state-owned organizations and made it easier for local governments to contract out for goods and services.
- **Tax and Funding Framework:** Tax concessions were improved in a 1996 law on corporate taxation, but two further developments had large impacts: the first was the so-called "1%" law in 1995, which allows taxpayers to earmark 1% of their taxes to specific nonprofit organizations, the second was the 1997 law on public benefit status. The "1%" law has been a model for other such laws in the region, and it provides considerable funding to qualifying nonprofit organizations (but note criticisms in the "NGO Sustainability" section). The public benefit status law provides a means to differentiate organizations based on their activities in order to receive tax benefits, and at the same time increases the reporting and accountability level from non-status organizations. An additional practical benefit of public benefit status – though not the goal of the law – is increased access to state funding. Later developments included minor changes to the "1%" law in 2000, but more importantly the creation of a National Civil Fund (NCF) in 2003, which was given responsibility for distributing a state "match" of the amount earmarked by taxpayers through the "1%" mechanism.

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<sup>17</sup> The development of EKAK began with UNDP support, but it began to founder and was taken over by former MP Daimar Liiv, who since leaving office had been a Muskie Fellow at Harvard and then conducted research on social compacts at ICNL's offices in Washington.

### *ICNL's Role*

ICNL's role in these developments was again extensive. As is quite often the case, the issues of public benefit status and tax concessions were intertwined. Discussions of these two issues involving ICNL began in 1994 and continued through the 1996 proposal of both laws; key informants considered ICNL's role to be "instrumental," their expertise was "directly utilized" in the drafts, and their approach was "open and flexible according to the conditions" in Hungary at the time.

It is important to note that the initial "1%" law was not an initiative that had been talked about within the nonprofit sector or external nonprofit law experts, rather it developed almost accidentally: MPs originally wanted to apply a model from Spain and Italy that would allow taxpayers to set aside 1% for cultural organizations (e.g., libraries and museums funded by the state), but then the idea expanded to include religious denominations and other not-for-profit organizations. Subsequent considerations about the regulations and process, however, benefited from ICNL's "active and useful" expertise, as was also the case in the development of the NCF.

The most common complaint we heard about the legal framework involved registration, not about the process of it, but the incompetence and obstructionism of the responsible courts. This is a problem beyond nonprofit law, however. The responses from key informants also produced consensus on current and future legal development needs. Desired improvements include:

- First, the procurement process between NGOs and the state needs to be clarified and regularized.
- Second, there are insufficient incentives for foundations to secure and maintain an endowment, which in practice reduces the distinction between foundations and associations. In addition, some informants argued for reducing the number of founders for an association, which would ease registration for associations, bring Hungarian practice more in line with regional standards, and have the effect of reducing the number of informal organizations.
- Third, the decision-making of the NCF should be more transparent and administered more efficiently. Some informants went so far as to state that the Fund needed to be autonomous from the state.

All of these needs could be addressed by ICNL or its Budapest-based affiliate, ECNL, and their involvement would be valued for "presence" and "comparative expertise."

### *Croatia*

The development of nonprofit sector legislation in Croatia had largely been determined by the Yugoslav conflict and the intense politicization of society. The change in government not long after Tudjman's death in December 1999 resulted in a spate of positive legislation for the sector.

- **Registration Framework:** The first major legislation was the 1995 Law on Foundations, which is so draconian with respect to obstacles and state control that only about 70 foundations exist ten years later. The second piece of legislation was the 1997 Law on Associations, developed solely by civil servants in the state administration ministry, that was severely flawed and the later subject of a Croatian Constitutional Court decision. Under pressure from international donors as well as the large and politically-powerful refugee community, the government established an NGO coordination office in 1998, which by 1999 had turned to improving the legal framework for NGOs. The head of the government



coordination office spearheaded an open process for development of a very progressive associations law, which was passed in 2001. A draft of a new foundations law was developed in 2005 but has not yet been passed.

- **Tax and Funding Framework:** Other 2001 changes included a revised humanitarian assistance law that allowed foreign donors to operate more flexibly and take advantage of tax and VAT concessions, and the establishment of a corporate charitable contribution. Finally, a National Foundation for the Development of Civil Society (NFDCS) was created in 2003, which was largely responsible for distributing funds generated by an earmarked portion of lottery proceeds.

The return to power of Tudjman's party, HDZ, in 2004, has been perceived by NPO leaders to have had a negative impact on the legal framework. First, the Finance Ministry by decree abolished the VAT exemption for goods and services purchased by NPOs and financed by foreign grants and donations.<sup>18</sup> Second, the new law on foundations, a volunteers law, and discussion of public benefit status have languished due to political opposition and bureaucratic politics. It is important to note in the key informants' responses about the legal environment that they do not consider foundations to be part of the sector, so the existing draconian law does not influence their rating of the legal environment.

#### *ICNL's Role*

ICNL's involvement in Croatia predated the 1998 establishment of the government coordination office. ICNL provided nonprofit sector leaders with critical feedback on the 1995 foundations and 1997 associations laws. Experts from ICNL's offices in Budapest (later ECNL) brought together a network of NGO experts and interested lawyers through workshops, roundtables, and publishing activities; as one informant said, "A critical mass more and more was created over the years." When the government coordination office began work on new foundations and associations laws, ICNL was a key participant in discussions by offering a comparative overview and objective expertise. The 2001 associations law and tax law amendments were "strongly influenced" by ECNL and its comparative expertise. ECNL has also been a very active participant in the drafting of a new foundations law and the proposed volunteers law, as well as ongoing debate over public benefit status.

#### *Bulgaria*

Nonprofit law in Bulgaria is generally good, but this is a development of the last five years.

- **Registration Framework:** Until the nonprofit entities law of 2000, the sector had been shaped by a law dating back to 1949. The 2000 law is the cornerstone of the legal environment, as it covers associations, foundations, and public benefit status.
- **Tax and Funding Framework:** Taxation, VAT, and other issues are the subject of legislative action almost annually, sometimes to important effect. Sector leaders had been interested in modernizing the legal environment almost from the very start of the post-communist era. By late 1993 a draft nonprofit organization law had been developed by the Center for the Study of Democracy (CSD), but no progress could be made in the political and economic stagnation that existed through the late 1990s.

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<sup>18</sup> This Directive was issued to bring Croatia into conformation with EU's 6<sup>th</sup> Directive. Information from ICNL Regional Director David Moore.

In 1997, the Justice Ministry suddenly produced a draft new law on nonprofit organizations without participation from any sector leaders, and this was followed in 1998 by another draft produced by an amalgamation of MPs, party officials, and some sector leaders outside CSD. A broad-based working group pulled together the best elements from each of the three proposed drafts, and this was the bill that was introduced by a sympathetic MP. Since then, there have been numerous minor changes to taxation, deductibility of contributions, VAT, and procurement processes. Most recently there have been important changes intended to open up social contracting to NGOs.

#### *ICNL/BCNL Role*

ICNL, and later BCNL, once more played and continue to play a “very strong” role in the development of the legal environment. ICNL was consulted extensively in the formation of the CSD draft. During the period 1997-2000 when there were multiple actors competing to shape the legal environment, ICNL was “actively but objectively engaged” in moderating the debate through a series of meetings, with logistical assistance from the Soros Foundation. Informants valued that ICNL’s use of local experts “stimulated Bulgarian ownership of the process of change,” and was “consultative” and “broadly participatory.” ICNL had sufficient “weight” and “comparative expertise” that one informant, when directly asked, stated that the 2000 law would probably not have happened without ICNL’s involvement, for the competitive pressures among involved actors were too strong and the other objective actors too weak.

In the period since 2000, BCNL was created and is now the lead in Bulgaria. BCNL has been very active in holding seminars on taxation, VAT, and deductible contributions; publishing general and technical guides; and working with relevant civil servants in way that is “very fruitful for us and them,” according to one official. BCNL was a leader in revising the social contracting law in 2003.

There are still issues to be grappled with in Bulgaria, and BCNL is well-positioned to be an objective and expert participant; one informant said that “BCNL is the most serious organization” in Bulgaria’s nonprofit sector today. One issue is the public benefit status that associations and foundations can obtain. As is usually the case, special status comes at the cost of greater scrutiny and accountability, but the positive trade-off of tax and procurement privileges has been established only gradually for tax issues and not at all for procurement. A second major issue is that the existing framework for corporate charitable contributions is confusing, and until 2005 may have actually provided a disincentive to firms. Tax law changes in 2005 clarified the context for contributions, but this is not widely known. Finally, as was the case in other countries, more distinction should be made between endowed grant-making foundations and operating foundations, as well as between the latter and associations. There needs to be more distinction between associations and foundations, as the latter could be established without any real endowment and thus function exactly as an association would function.

#### *Slovenia (comparative case)*

There are 127 terms in Slovene legislation that relate to civil society. There are between 110-120 acts that regulate rights and duties of NGOs in different fields of life. The NPO laws in Slovenia are generally confusing and decentralized systematically; an issue that does not appear to be a high priority of the government. One informant complained that although Slovenia is a member of the EU, its laws for the civic sector meets only the lowest standards of the EU requirements.

- **Registration Framework:** Associations and foundation are registered with the Ministry of the Interior. A new draft is now in progress in order to update the Associations Act of 1995, which had been adapted from the socialist Association Act. In general associations are membership based and oriented. The Foundations Act of 1995 updates a pre-communist foundations act from the 1930s and is separate from the Associations Act because foundations as such are entirely new institutions for Slovenia. The Foundations Act has been criticized because it only allows for public interest foundations, not private foundations, but the government has not decided whether or not to change it. The Private Institutions Act is under the Ministry of Public Administration, covering a lot of what we would think of as NGOs. This is mainly there for service delivery organizations including hospitals, libraries, private schools and NGOs. There also exists separate acts on humanitarian organizations and on organizations for the disabled; both receive funding via the lottery based on competitions. Other laws regulate various NGO activities in different fields (ex. culture, sports, environment, etc.) and there are some special status laws in the state budget (ex. Red Cross law, hunters' law, volunteer firemen, etc.).
- **Tax and Funding Framework:** Current tax solutions date back to 1991 and the Ministry of Finance finds that they work well and say they have had no strong pressure to change them from NGOs, the public, the politicians, or the government. They have no plan to review the tax structure since last year it was reaffirmed. Membership fees are tax deductible, but there is a tax on any income generated as a profit. The Ministry of Finance is very clear that it does not want to increase exemptions and lose tax income of any sort. Even public interest organizations are taxed in this way. The Ministry feels that no NPO should have an advantage over commercial organizations when they are competing in the market place. There are no VAT exemptions for NGOs. Various tax incentives include: (a) a chance for individuals to deduct up to 2% of their taxable base for charitable giving; (b) a tax on legal persons (a corporate income tax law) which deals with tax exemptions for nonprofit organizations or people performing nonprofit activities (all nonprofit activities are tax exempt but one still must pay a tax on any income derived from profit); (c) tax incentive for donations from corporations – up to 0.3% of all revenue of the company for humanitarian, culture, sport, religious or scientific activities.

#### *ICNL Role*

ICNL has not played an active role in Slovenia although they have a relationship with the Legal Information Center for NGOs (called the PIC) and have offered advice when the PIC has produced draft legislation related to the NGO sector. **One clearly sees the absence of an honest broker for negotiation and discussion between the government and the NPO sector.** In other countries, ICNL was consistently credited by the government for its expertise and ability to provide comparative analysis and by the NPO sector as making it much easier to talk with the government and make them listen to the needs of the sector. As it is, the NPO sector in Slovenia claims that it is not taken seriously by the government. Although the sector is included in discussions or consulted on occasion, it still feels like an observer and notes that its input is rarely used.

Many outstanding issues could be pushed forward with the participation of ICNL or ECNL. These include helping to find government champions to push forward a draft Volunteers Law, addressing tax constraints for NGOs; and assisting in the harmonizing Slovene legislation with

EU legislation on issues that affect civil society -- and being sure the civil society view is represented in that process.

### Conclusions

1. **The legal environment for the nonprofit sector in each of the four ICNL program countries is generally good**, with the exception of foundations in Croatia (as noted) and some stalemates on the passing of legislation in Croatia. All four countries are dealing with second or even third generation issues:

- Revising the nature and meaning of public benefit status;
- Making state procurement and grant-making processes more transparent;
- Regularizing the status and use of volunteers;
- Reviewing and improving framework laws to ensure that each organizational form is distinct enough and able to serve its purpose more effectively; and
- Tweaking tax and VAT concessions, and clarifying the status of economic activities.

All of these issues are as important for the sector as the basic legal structure, for they shape the economics and behavior of nonprofit organizations in critical ways. The general state of the legal environment is an especially important finding not simply because this had been the primary thrust of ICNL's programs, but also because of the very different political and economic conditions under which these positive changes have taken place.

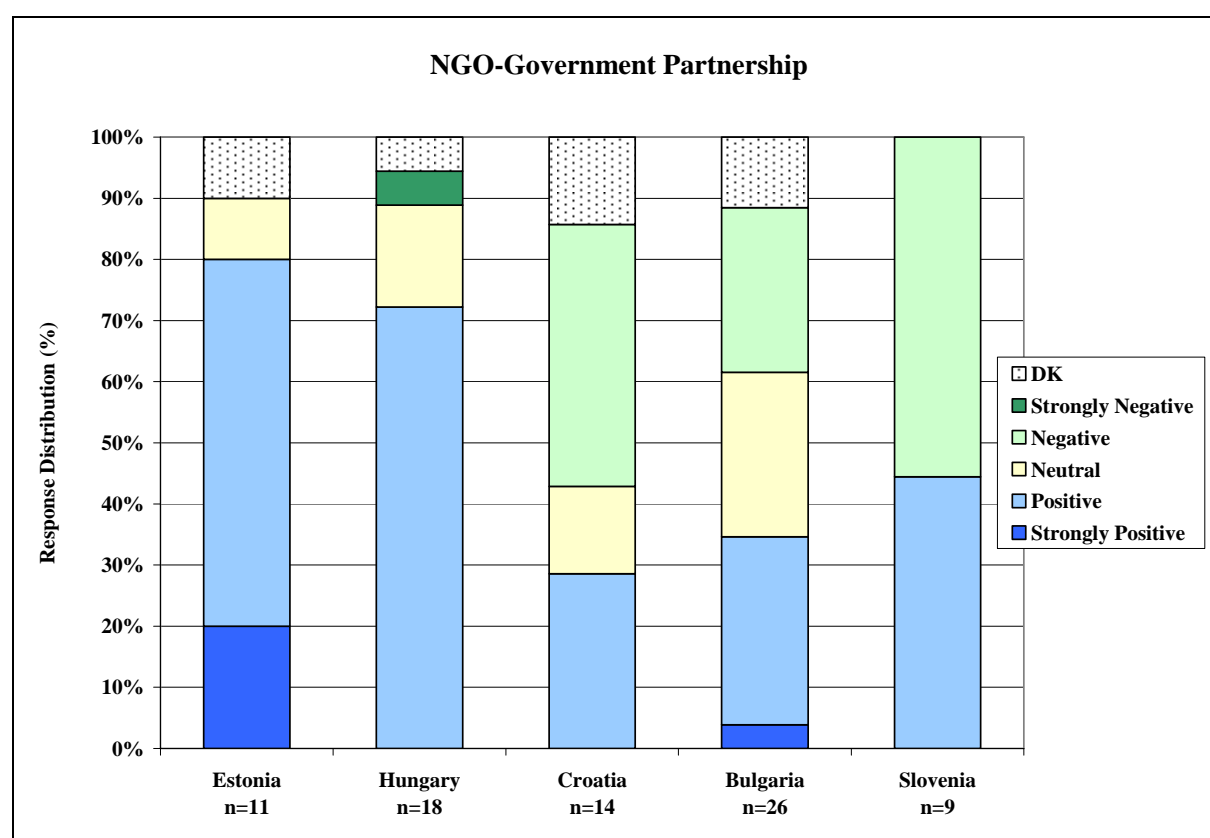
The comparative case of Slovenia is very instructive here. The legal environment there consists of a bewildering variety of laws and ministry-specific regulations, and key informants outside the government gave the laws very low ratings. Moreover, Slovenia is not yet dealing with the higher-level issues that the other four countries now have before them. In terms of its political history, rapid political change, and economic transformation, Slovenia is directly comparable to Estonia, yet the differences in the legal environment are vast. A less flattering comparison for Slovenes is that their environment is perhaps less positive than in neighboring Croatia, which has been powerfully shaped by a negative context of conflict and politics not seen in Slovenia.

2. **ICNL has clearly been a key actor in the development of legislation in the region over a long period of time. ICNL affiliates, ECNL and BCNL have become important contributors to the resolution of 'second generation' legal issues.** Their involvement has been viewed as extensive, objective, expert, and sensitive to local conditions. ICNL experts bring a comparative overview and international weight that is valued by all sides in discussions. Moving forward with the second and third generation legal issues in the region may be more of a job for ECNL and BCNL but they will continue to benefit from their close relationship with ICNL. In fact, there will be occasions when bringing in their founder will provide an objective opinion that governments in the region will value. There is clearly a role that ECNL has and will continue to play throughout the region, especially in Croatia with respect to providing comparative analysis in support of a new foundation law, providing expertise for the volunteers law, or building awareness of issues surrounding public benefit status. As was the case with the 2001 associations law, though, this might be a case of waiting out the current government. As noted above in the Slovenia section, progress in that country might be stimulated with some ICNL/ECNL involvement.

## NPO-Government Partnership

### Overview

Relationships between governments and NGO communities in the region differ from country to country. Requirements related to accession to the European Union reportedly have played a significant role in promoting interactive NPO-Government relationships. However, based on the comparative visit to Slovenia, where USAID has not played a significant role in democratic development,<sup>19</sup> much less any other foreign aid donor, we can posit that the consistent presence and pressure of external donors and implementing agencies have been just as significant as EU accession requirements have been in contributing to more effective partnerships and deeper relationships. International influence helps NGOs get issues into government offices and appears a key to government taking civil society seriously as a partner.



<sup>19</sup> USAID implemented a \$12.4 million assistance program from 1993-97. However, USAID never worked in the area of democratic development on the scale that it worked in other CEE countries. The bulk of USAID assistance went to financial sector reform and private enterprise development. Democratic reform programs received a total of \$814,000 from 1991-95. USAID's assistance to Slovenia's democratic reforms focused on institution building and training through cooperation with the US Information Agency (USIA). USIA's Democracy Commission grants and USAID's participant training program modestly supported the growth of independent media, the involvement of NGOs in policy making, the distribution of American literature and textbooks to Slovenian educational institutions and the strengthening of English language skills among teachers and other professionals.

## Findings

Relationships in the region seem to be driven either by government or by civil society – but rarely appear to be symbiotic equal relationships. Following are short descriptions of the situation in each country that the team visited:

1. Estonia – Estonia respondents gave a very positive rating of over 7 on the 10 point scale, nearly as high as their rating of the legislative framework. This is a reflection of the very close and formalized working relationship that has developed between NPO leadership and government through the Compact (EKAK) discussed in the previous section. This compact gives the Estonian NPO sector an institutionalized relationship with the government, and provides the government with an effective and well established interface with NPO community. This acceptance of this arrangement is unique in the emergent CEE and SEE states and may be considered a very European model for organizing the NPO-Government relationship. It works in part because Estonia is a very small country, about the size of a medium sized city in the U.S., and because the NPO community has accepted the legitimacy of the leadership group's representational role with respect to sector wide issues.
2. Hungary – Although the relationship was not rated as very positive by the NPO sector, it is important to note that the NPO-Government relationship in Hungary represents a growing and changing relationship that is increasingly complex and sophisticated. Over time, Hungary has enjoyed a proactive government driving the establishment of a legislative framework for civil society. One interviewee noted that “there was always enthusiasm for democracy and civil society and even though the government didn't understand it initially, it supported it.” The government position has been both a positive and a negative and some argue that it simply represents the continuation of a post-communist paternalistic state model in which NPOs are dependent on the government to provide solutions. The state certainly has played the leading role in developing conditions for the sector, which means that the results are not always optimal for the sector. Today, the relationship now involves many types of cooperation and in the new EU environment there is an upward trend towards public service out-contracting to NPOs.
3. Croatia – The relationship here is much less mature than in other countries and clearly development was stalled by the Balkan wars and the Tudjman HDZ era. One might say that only since 2000 has civil society been building an interactive relationship with government. The new government in Croatia is criticized by NPOs as less responsive than the previous government. Regardless of the current government attitude, the Croatian system has institutionalized a range of financial and developmental support for NPOs, including a National Foundation for Civil Society Development that receives annual lottery funding, the passing of favorable tax incentives for individual giving, and the establishment of a NPO-Government Cooperation Office as well as a Council for Civil Society Development that is half government and half civil society. Local governments and some ministries have also begun creating mechanisms for outsourcing services to NPOs through competitions. Not all of these government offices and mechanisms are thriving, but they make it difficult for government to ignore civil society entirely. In addition, civil society has shown some signs of self-organization in response to the worsening government attitude and actions towards NPOs, which may help consolidate the voice of an otherwise disparate community of NPOs – if they are organized, it would clearly place the full onus on the government to start including them in decision-making processes.

4. Bulgaria – Most feel that the relationship has been slowly improving over the last five years – but is still far from optimal. The government no longer questions NPO legitimacy and accepts them as vehicles for social service delivery. The EU has played a key role in promoting NGOs as a stakeholder in decision making processes, although most NPOs still feel more like invited observers of the processes rather than respected contributors. EU funding has been a prime driver of NPO-Government partnerships, with both parties recognizing the mutual financial benefit of these arrangements. Local government level partnerships are more effective and results richer than the national level ones. Problems still exist in regard to a favorable tax environment for NPOs but the overall government relationship is growing and deepening. Large civil society players like the Open Society Institute, in cooperation with BCNL, have developed initiatives to strengthen and unify the voice of civil society as a government partner.
5. Slovenia – The NPO-Government relationship in Slovenia is extremely weak, as reported from both sides for different reasons. The government has been disappointed overall with the capacity of civil society to provide timely and substantial input to decision-making processes. NPOs feel that the government does not take them seriously or provide them with the opportunity to offer input or feedback – and when they do it has a one-day turn around time and tends to be disregarded anyway. One government employee said that Slovenia would have gotten into the EU whether or not the government cooperated with NGOs – but it makes them look better when they consult NPOs so it is worth it. However, it is just this attitude that irks NGOs – they claim that the government makes one telephone call to an NGO and then writes into its reports that civil society has been consulted. Without external forces pushing and assisting both the government and civil society to create a constructive working relationship, the situation is unstructured and uninspired. The government approach to communication with NPOs spreads responsibility among ministries making it almost impossible for NPOs to know where to go to engage government in discussion. In addition, there are no mechanisms for NPO contributions to legislative drafting until it reaches the parliament – which is too late in the process to impact the content. As in Croatia, the new government is blamed for stalling growth in the relationship between government and civil society. Bodies that had been created for dialogue have been disbanded and/or forgotten. Some activity is currently going on concerning the development of a government strategy for cooperation with civil society. While few government mechanisms exist for direct NPO funding, it is possible for ministries to tender social services to NPOs and the government does fund a center for the development of civil society. However, one can say that for a country that has been on the development track since independence in 1991 and that has achieved EU member status, the NPO-Government relationship has evolved extremely slowly and still is sub-par compared to other neighboring countries both inside and outside of the EU. It is worth noting that the daily basic survival struggle of civil society in Slovenia, due to a lack of funding, minimizes the ability of the sector to find a common voice for dialogue with government.

#### *ICNL's Role*

ICNL, BCNL and ECNL have played a significant role in helping to professionalize and improve NPO-Government relations in countries in which they work. Their participation helped NPOs in arguing for changes in legislation and made it easier for NPOs to relate to government and vice versa. ICNL and ECNL are willing to play a low-key backseat role as a reference and mediator

in NPO-Government discussions. Both sides accept them as consultants and are willing to listen to (and often take) their advice.

### Conclusion

Over the long-term, external pressures and players have been critical to the development of working NPO-Government relationships in the region. This includes the EU, but also USAID and other donors as well as implementers like ICNL that emphasize government-NGO dialogue and collaboration.

However, over the short-term the two factors which most affect the productivity of the NPO-Government relationship are 1) the overall tenor and attitude of each government towards NPOs and 2) the ability of NPOs to quickly organize a coherent voice and response to government initiatives. The more institutionalized the relationship is (with efficient mechanisms for NPO participation and input), the more likely it is to maintain relevance over time regardless of government attitudes.

There is still room for ICNL, ECNL, and BCNL support for getting government to listen to the sector and hear its needs, especially in countries like Croatia, Bulgaria and Slovenia. Although civil society can increasingly represent itself vis-à-vis government in most of these countries, the second generation NPO issues will require on-going input and comparisons across countries – a recognized strength of ICNL, ECNL and BCNL.

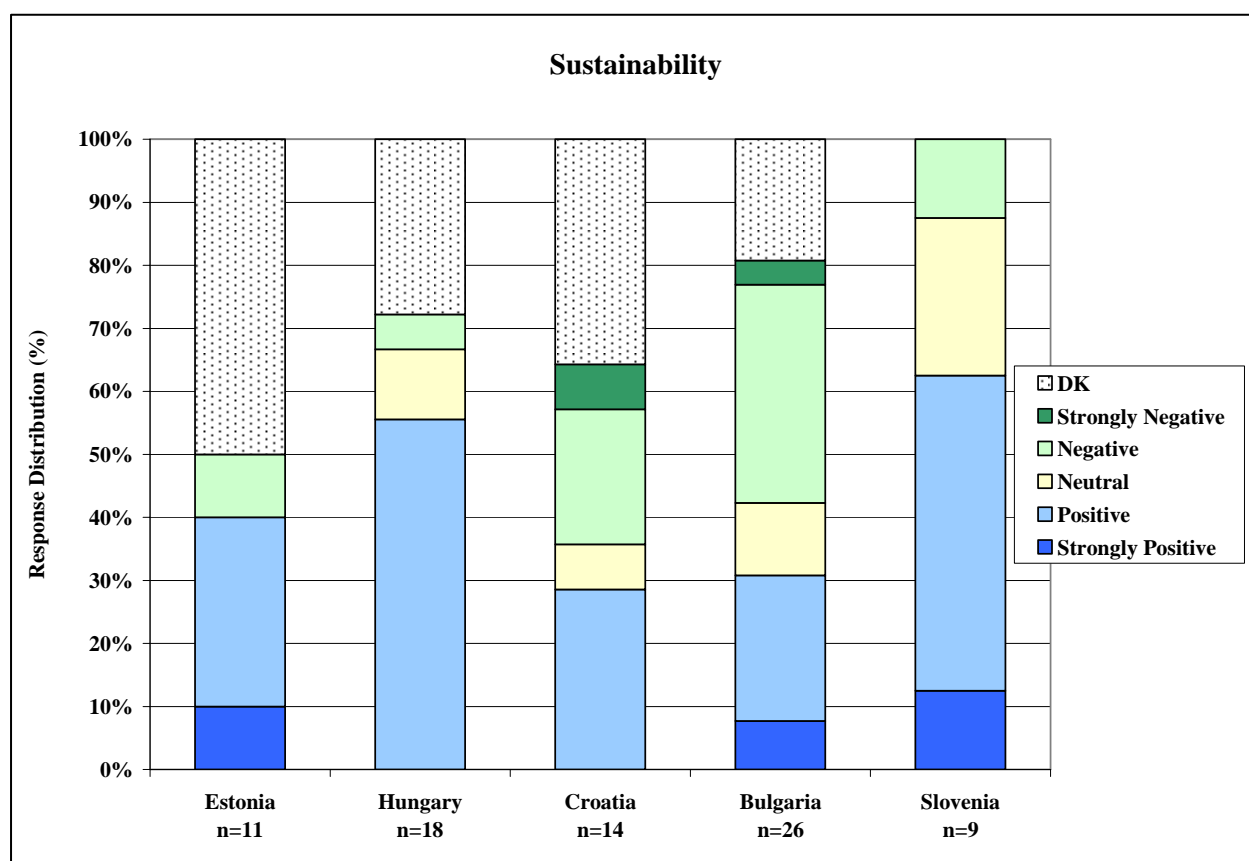
It is more than likely that even without USAID funds, the countries that have worked with ICNL and ECNL will still seek input from them. In Bulgaria, BCNL will play an ever increasing and broadening role, as will ECNL in Hungary. However, some kind of institutional support would enable a quick response when ICNL or ECNL input would help the NPO-Government dialogue on legislative and regulatory development.



## NGO Sustainability

### Overview

The second most important issue facing nonprofit sectors after the legal framework is the issue of sustainability. The financial resources available in the nonprofit sectors of all four ICNL-program countries and Slovenia have risen dramatically in the last 16 years. As seen in the table below, however, key informants had quite different ratings of the sustainability of their country's nonprofit sector, often differing radically within a country. The discussion of financial support for nonprofit sectors in all countries was focused for many years on issues like tax concessions, VAT, and deductible contributions, and to some extent on allowing for unrelated economic activity. While key informants in all four ICNL-program countries were optimistic about the potential development of philanthropic giving, the Johns Hopkins Comparative Nonprofit Sector Project has shown definitively across almost 40 countries that philanthropy is almost never a major source of revenue (the small sectors in Uganda and Pakistan are exceptions), and that it is the public sector and membership-plus-market-activities that provide the overwhelming majority of funding. Advocacy and watchdog groups are the most vulnerable to shifts in funding sources, and, in many other countries, rely more heavily on philanthropy than other segments of the sector.



The turn in the last five years toward discussing state procurement, grant-making, earmarked portions of “sin” taxes, and “1%” schemes is belated recognition of the importance of public sector support for the sustainability of the nonprofit sector. Among the four ICNL-program countries, Hungary clearly has the highest rating and narrowest range of responses, which is an

accurate reflection of the diversity of sources available to the sector. For Estonia, positives outweighed negatives, again a reflection of diverse public sector support. Croatia, however, had equal amounts of positive and negative ratings, with the negatives slightly more intense; this is somewhat unexpected given that the sources of funding are quite similar to that in Estonia. The ratings in Bulgaria show similar levels of positive ratings as in Croatia, but enough negative ratings to drive the relative relationship into negative. Bulgaria is still quite donor-dependent, and has not yet developed the diversity of state support that the other three countries enjoy.

Ratings from participants at the Global Forum in Istanbul showed an overwhelming majority thought that their country's sector was somewhat sustainable, in that most NPOs would adapt once public and private foreign donors depart, but advocacy NPOs would be disproportionately affected. Most of the responses from USAID missions in countries other than those studied directly were that NPOs were largely dependent on foreign donors, and thus a majority would fail once the donors depart.

### Findings

It is not clear whether the ratings accurately reflect the general situation or the particular fears and concerns of the respondents. The most pressing concern in all four ICNL-program countries is that foreign donors will be leaving in the next three years or so – legacy institutions from bilateral agencies or foundations in the cases of Estonia and Hungary, bilateral agencies in the cases of Croatia and Bulgaria – and that philanthropy is still marginal. Two other contextual factors should have been encouraging to our key informants. First, the level and diversity of public sector support is not insignificant, although it may be politicized and/or *ad hoc*. Second, considerable EU funding is or will be available that requires stakeholder participation and the use of service providers at the local level. The shifts in external funding, however, will hit advocacy and watchdog organizations disproportionately hard, while service provision groups at the local level should benefit.

### *Estonia*

Bilateral donors closed offices in Estonia in the mid- to late-1990s, although there is the Baltic-American Partnership Program (BAPP) as a legacy institution; BAPP is scheduled to close out in the next three years, however. NPO leaders frequently referred to BAPP funding as a resource for study trips and research into new initiatives, such as the pending Law on Volunteers. Tax laws from 1994 provided some benefits, but it was not until changes in 2001 that portions of revenue generated from economic activity were tax-exempt and there were reasonable incentives for charitable contributions. The Estonian state has long offered funding in the forms of grants or contracts that nonprofits could obtain, but each ministry has its own processes, criteria, and NPO approach. The 2002 EKAK (social compact) was a high-profile action by both the state and the sector to clarify and regularize interaction between the two sides. However, overall respondents said the process for allocating funds was deficient and led to politicization, especially at the local level. Ongoing discussions and cooperative legislative drafting should reduce the *ad hoc* nature of working with different ministries. One of the more important sources of revenue stems from “sin” taxes, a portion of which are earmarked for the nonprofit sector. Key informants raised concerns that this funding was controlled by a parliamentary committee, and thus was somewhat politicized, provided no checks on re-routing of funding for non-sector activities like road-building, and involved only minimal participation by sector leaders. With respect to EU funding, especially for local development, Estonia has a strong system of local government, which as the

venue for NGO registration has developed a solidly positive working relationship with NPOs. Moreover, the 2003 Law on Obligations improved the ability of local governments to work with the informal segment of the nonprofit sector.

As with the legislative framework, ICNL provided needed comparative analyses and expertise with respect to tax concessions and economic activity, although the advice was not reflected in legislation until 2001. Further, the 2003 Law on Obligations was also based on advice from ICNL in the mid-1990s, and ICNL was part of the discussions over development of the EKAK. The key informants we spoke with were tying their future sustainability to changing the distribution of “sin” tax proceeds, regularized state procurement, and increases in philanthropic activity. Moving control of the “sin” tax funding out of parliament and into an autonomous body with significant sector representation is the most important issue for some key informants. For others, the issue of regularizing ministerial procedures and criteria is more important, but again this is the subject of EKAK efforts. Finally, promotion of philanthropic giving has only been active recently, but should improve donations in the coming years.

### *Hungary*

The “1%” law passed in 1995 has long been recognized as an innovative tool for promoting charitable giving, but Hungary was also among the first to provide significant tax concessions for economic activity by organizations with public benefit status. Nonprofit organizations in addition may draw on ministerial and local government sources of funding. Finally, the establishment of the National Civil Fund in 2003 as the means for distributing the state’s “match” of direct “1%” designations effectively doubled the impact of such designations, and the application process is widely viewed as simple. There should be no surprise that Hungary’s ratings for sustainability exceeded the other three ICNL-program countries.

At the same time, however, key informants expressed some concern that foreign donors were leaving the country. Other negative aspects of the current funding environment were also brought up in several interviews. First, the heavy use of public foundations for projects funded by local governments and ministries seriously distorts the picture of state support for the sector, which may worsen as more and more EU regional development funding is pushed down to the local level; indeed, several respondents expressed the opinion that these public foundations were actually doing work that the state could do without the intermediary of a public foundation. Reform and regularization of state procurement processes is thus a major concern for sector leaders. Second, the state promised that its “match” would have no effect on direct support, but levels of direct support have dropped significantly since the Fund was established. Third, some respondents perceived that the Fund was politicized and gave too much control to supervisory authorities (Ministry of Social Affairs and the Treasury), and so as in Estonia there is movement toward making the body more autonomous; this will have to await the outcome of the 2006 elections, though. Finally, the amount of money transferred through the “1%” mechanism is misleading: first, most people have their employers fill out their tax returns, and some employers have set up organizations with public benefit status and then simply direct “1%” contributions to those organizations; second, much of the generated funding is for crisis or disaster relief organizations, and advocacy and watchdog groups find it difficult to attract much support. ECNL has been and will continue to be engaged in discussions on all of these issues.

### *Croatia*

The sustainability of the nonprofit sector in Croatia has like all other aspects been powerfully shaped by the conflict and political polarization of the 1990s. The generally adversarial approach of the Tudjman government and his HDZ party limited beneficial tax and VAT concessions to favored organizations or activity areas. Tax law changes in 1998 introduced at 22% VAT that applied to donated goods, which had a decidedly negative impact on organizations receiving grants from foreign donors – organizations that tended to oppose Tudjman – or engaging in humanitarian assistance without being among the politically-connected and favored groups. The change in government not long after Tudjman's death provided a needed opening. Tax law changes in 2001 expanded the tax exemption for nonprofit organizations, although still left unclear the extent to which NPOs could engage in economic activity. The upper limit at which VAT would kick in was raised significantly, and was zeroed out completely for international grants and donations. More significantly for the sector, a 2003 law earmarked a portion of lottery proceeds for distribution to the sector via NFDCS in cooperation with sub-sectoral umbrella organizations. Although direct grants from ministries have dwindled since the late 1990s, it has been made up for ten-fold by funding from the lottery proceeds. The return of HDZ to power, though, has resulted in a re-politicization of support for NPOs, according to several respondents.

ICNL and ECNL were deeply involved in tax law changes, as discussed in the section on the legislative framework, and continue to have regular contact with lawyers and tax experts. The lottery proceeds have produced a flood of funding, but the reality is that because so many sub-sectors lack umbrella organizations, the money is controlled by the relevant ministry and thus tends to be distributed non-transparently; quite a bit of the money is destined for sports and cultural organizations in the first place. Improving the accountability and transparency of this distribution is a priority for some key informants, while there were also suggestions that the NFDCS should be autonomous of the government. The ambiguous language on economic activity remains an obstacle to increasing revenue, too, but other there are currently three proposals in the government's hands that are being awaited by the sector: a law on volunteers, a new foundations law, and a code of good grant-making practice that would regularize ministerial grant processes. All three of the proposals benefited from ECNL expert input and comparative analyses. Finally, the looming departure of many foreign donors and the increased availability of EU funds is creating a noticeable level of concern in the sector.

### *Bulgaria*

The sector's sustainability has long been a problem in Bulgaria due to donor dependence, and even improvements in tax concessions, VAT, and charitable deductions have not had much impact. Past treatment of charitable contributions actually provided a disincentive for both sides of the transaction, but positive changes in this have not been recognized. A major development has been the 2003 social contracting law changes, which should provide more opportunities for NPOs to engage in state procurement. Perhaps because Bulgaria does not have any kind of "sin" tax proceeds or central funding distribution point was it considered urgent to work on social contracting.<sup>20</sup> Philanthropy is not much more than a novelty, and economic activity is vaguely defined and fully taxed, so most Bulgarian NPOs have scant experience raising money through

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<sup>20</sup> In Bulgaria there is some sort of direct budget subsidy for several organizations such as the Red Cross, Union of Blind, etc. but in 2005 there was approximately 800 000 BGN distributed to public benefit organizations after an open competition. The problem was that there were no clear guidelines and no clear procedure how the winners were selected. Communication from Luben, Panov, BCNL

either means; many informants mentioned that most Bulgarian NPOs live project-to-project. As with Croatia, the impending closure of aid and foundation offices and the rising urgency of strategies for dealing with EU funding present the sector with some critical challenges.

### *Slovenia*

Slovenia offers a very interesting comparative case. Looking at the funding environment for NPOs in Slovenia, it would be fairly impossible to become dependent on any one source – since the sources that exist are inconsistent and difficult to access. Thus, it is fair to say that any NPO that manages to exist in Slovenia over a period of a few years and implements more than one project is inherently sustainable – since that NPO has, against many odds, found a way to finance its activities. However, the dire funding situation for NPOs also means that the sector wages a daily battle for basic survival, which weakens its ability to delegate attention to much else. There are few internal coalitions and the NPOs with any stability reflect themes that enjoy steady funding flows from the government – the disabled, humanitarian causes, social service NGOs, and associations like the fire brigade.

In fact, one could posit that Slovenia offers a great view of what civil society would look like in a country that has not enjoyed funding for the development of the sector (thus providing a proxy measure for the effectiveness of NGO sector development assistance). As the 2004 USAID NGO Sustainability Index excerpt on Slovenia states,

“many of the activities undertaken by NPOs are ad hoc; strategic planning is not commonly practiced...NGOs suffer from a lack of full time, qualified staff....Clearly defined management structures can only be found within some NPOs, mostly the ones with more funds, more members and more professional staff.”

In Slovenia, there are no indigenous human rights organizations – only two branches of international human rights organizations and very few advocacy oriented organizations. Those that do advocacy have developed out of need but work more as volunteer organizations than professional organizations. In fact, the civic sector employs very few people full time, since the funding consistency is not there. One government informant commented that in Slovenia, people working in the civic sector are considered either “losers or extreme idealists” – because the money and work security is so much better in the government or in the business sector.

One might also look at Slovenia as a possible demonstration of what will become of civil society in other new EU member states as sources of funding dwindle for the advocacy and watchdog roles of NGOs. The NGOs that thrive in the EU environment are those that work closely with government and offer social services.

If sustainability is viewed in terms of survival and the ability of NPOs to access diverse funding sources, then Slovenian NPOs would get a positive mark. However, if sustainability is viewed as financial stability, organizational professionalism and the ability to muster a collective voice for the benefit of the NPO sector, then the Slovenian NPO sector would get a sadly negative mark.

From the evaluation perspective, the legal environment for NPOs plays into the sustainability and effectiveness of the sector by creating a framework and standards that together ensures the latter view of sustainability. As it is, the legal framework for NPOs in Slovenia may not be ideal, but it is adequate for the registration of NPOs and leaves them room to participate in policy making. However, many NPOs question the degree to which the government takes them seriously as partners in policy development and NPOs lament their exclusion from Ministry of Finance discussions on the tax codes, an important element for financial stability. The current

NPO environment that is based on Darwin's Survival of the Fittest theory does not enable NPOs to find a common voice or to focus on organizational and staff professionalism and training. Thus, the simple of existence of an adequate legal framework is not enough to ensure sustainability of the sector. The work that ICNL, ECNL and BCNL do in terms of legislative implementation, updating, and analysis offer the necessary follow-up to legal change and help foster a truly sustainable sector.

### Conclusions

The sustainability picture in each of the four countries is different, with only Hungary showing a narrowing of ratings within this aspect. Each country has largely moved beyond issues of tax concessions, VAT, and deductions for charitable contributions, but Croatia and Bulgaria still must more clearly define what is meant by economic activity and how it will be treated for taxation. Estonia, Hungary, and Croatia have dedicated sources of funding distributed to the sector by the state, leaving just Bulgaria largely dependent on foreign donors. The former three also have some sort of central state authority involved in distributing earmarked funds, and there is discussion of making the bodies more autonomous and transparent. Key informants in all four countries prioritize reform of state procurement and grantmaking processes.

The comparison to Slovenia is useful here, too. The sustainability ratings in Slovenia were the highest of the five countries under study here, but in such a small sample this was driven largely by strongly positive ratings by government officials or fully-government funded organizations; other informants pointed out that the issue is survivability, not sustainability. In all other aspects Slovenia compares best to Bulgaria, in that philanthropy and economic activity are low, reliance on foreign funding is high, and there is no dedicated source of state funding as in other states; indeed, if one sets aside sustainability from the overall group of ratings, the profile most closely resembles Croatia and Bulgaria, not Slovenia's fellow EU members of Estonia and Hungary.

One development that struck the entire evaluation team was the growing dominance of a statist, "top-down" approach to civil society in all four countries. While data from Johns Hopkins show the significant role played by public sector funding in nonprofit sectors around the world, the team became concerned that the lack of philanthropy and significant economic activity raised the possibility of serious distortion in the sector: two "legs" of the three-legged funding stool are stumps, while the remaining "leg" represents insider relationships or politically-vulnerable funding flows. Raising the level of diversity and quality of channels to state funding becomes even more important given the diminished – but hopefully growing – role of philanthropy and economic activity.

This can be seen in several trends affecting sustainability. First, the use of dedicated sources of funding via the state through earmarked "sin" tax proceeds has led to reduced urgency in regularizing state procurement processes and the growing importance of those earmarked funds. The net effect thus is that the funding relationship between NPOs and the state has become more of an arms-length or indirect interaction, leaving the sector tremendously vulnerable to future political shifts, as well as diminishing contact between the two sides.

Second, the withdrawal of foreign funders like USAID, DFID, and Soros entities and the arrival of EU funding schemes will not result in a seamless change in the funding environment. On the contrary, the change will affect one set of groups quite negatively and completely different set of groups quite positively: advocacy, watchdog, and sector-focused groups based primarily in

capital cities will die in large numbers, while service provision groups outside capital cities with political connections are most likely to prosper with EU regional development funds.

## **NPO Capacity**

### Overview

Organizational capacity is defined for purposes of this evaluation as the extent to which the NPO sector is sufficiently organized to maintain influence and conduct an informed dialogue with government on matters of interest to the entire sector. It includes as well the ability to systematically monitor government implementation of laws and policies relevant to the sector. Finally, it also means that the NPO sector has sufficient technical expertise in legal affairs to enable it to defend its interests, and the interests of specific NPOs when necessary, as well as to lobby for needed changes in the legislative structure without recourse to outside experts.

ICNL's role in promoting organizational capacity is focused on raising legal understanding and awareness of best practices generally through workshops, seminars, training, study visits to other countries, and by the preparation and distribution of various "guides" to different issues, such as volunteerism. ICNL has also mounted NPO law courses at the Central European University in Budapest, as well as offering support for some national level law schools interested in offering NPO law to their students.

### Findings

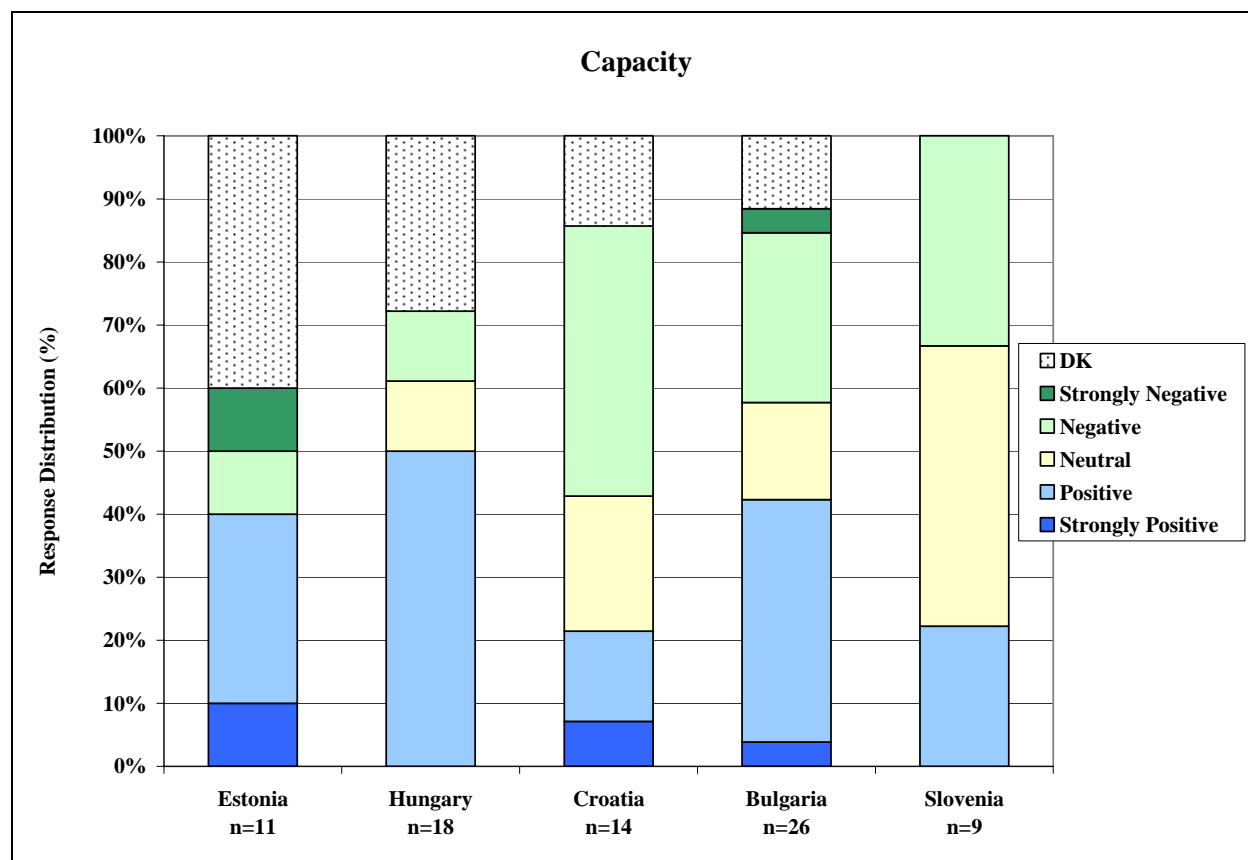
In three of the four countries visited, the country by country ratings of NPO capacity were among the lowest of the six dimensions. Estonia was not rated, but the high level of NPO-Government partnership as well as the strong leadership manifest in NENO, The Volunteer Center, and other organizations suggests that Estonia would be the exception.

In Hungary, respondents rated NPO organization capacity barely positive, while in Croatia and Bulgaria, they rated it at the mid-point or, as in Croatia, negative.

The ratings given by USAID Missions for Croatia are consistent with the ratings of NPO respondents in reporting that while there are strong leaders, there is little organizational coherence to engage with government on sector wide issues. On the other hand, Missions elsewhere in Southeast Europe are more positive, responding that NPO leadership has begun to organize and demonstrate an ability to engage with the government on sector wide issues.

While respondents in Hungary, Bulgaria, and especially Croatia were somewhat pessimistic about the capacity of the overall sector to present a coherent and united position on issues with government, it was noted that there are strong leaders at the substantive level, such as environment, women's rights, or disabled peoples who have been able to mobilize their followers and push for issue specific policies favorable to their interests.





### ICNL's role

ICNL's contribution to the development of sector capacity is seen more as an attribute of their efforts to promote good legislation, rather than a specific result independent of legal development. While many respondents agree that ICNL has had influence in developing NPO sector capacity, the more general view is reflected in the statement from a USAID Mission:

“ICNL does not have relevant expertise in capacity building and organizational development...their main focus is on improving legislation. Although they have been active in providing some training and technical assistance related the drafting process or implementation of some laws.”

Two USAID Missions that rated ICNL's involvement in developing legislation as “critically important” also gave a strong positive to ICNL's capacity building efforts, especially with respect to training judges and lawyers. One USAID Mission that no longer enjoyed ICNL involvement lamented:

“Since the end of fiscal 2003 year ICNL has not provided any assistance to the NPO sector in....We feel that more assistance is needed...There is no continuous training of judges and lawyers dealing with registration and other law enforcement issues. No (other) donor is providing any assistance in this area.”

The ICNL affiliate in Bulgaria, BCNL, is pursuing a “build from the bottom up” strategy to developing NPO sector capacity. By concentrating their efforts on substantive issue areas, the

BCNL leadership believes it is possible to find sufficient common interest and specific benefits that will encourage different groups to work together. For example, many family service oriented NPOs that aspire to become professional care givers and service providers find it difficult to gain government support, and in some countries, find outright hostility to their efforts. By lobbying for a better public benefit law, and for some reasonable process of certification, these organizations are beginning to develop advocacy and dialogue skills with help from BCNL. BCNL's strategy is to develop strong interest area leadership and representational capacity, with the hope that when there is a more general threat to the sector as a whole, it will be relatively easy to form a coalition of experienced leaders capable of representing the NPO sector.

One other area where ICNL has had a modest level of financial commitment from USAID is in the area of more formal academic legal education. ICNL has organized a regional conference on this issue, and has provided advisory support and input to more than 10 universities in the region. As reported by several A and B list respondents, the most successful program is the Central and East European University NPO law course and clinic, according to some respondents and ICNL. Other law schools have introduced some few courses on NPO, often taught by a former ICNL intern from the CEU program. There remains very little commercial demand for lawyers specialized in NPO law, as most NPOs report that they already have access to general lawyers for most of their concerns. Some countries, such as Bulgaria, through BCNL, offer legal consulting services to NPOs, but in the main, the need seems to be more for a relatively small number of high quality NPO legal analysts rather than building up a substantial cadre of lawyers competent in NPO law that would find employment serving the NPO sector.<sup>21</sup>

It is important to distinguish the ICNL contribution to sector capacity from the more comprehensive development programs implemented by USAID partners such as Counterpart, World Learning, and others. ICNL was never expected to be the primary agent for sector capacity building and advocacy development. ICNL recognized early on that getting legislation passed was a vital part of their mission, and developed a variety of 'capacity building' approaches to achieve this objective. With limited funds, they have continued to find opportunities to train judges and other government officials in the application of legislation relevant to the NPO sector. While most local respondents as well as USAID Mission respondents saw ICNL's role as useful and certainly important with respect to such matters as training judges, developing temporary advocacy and dialogue coalitions, they did not see ICNL as the primary vehicle for promoting sector wide NPO capacity.

ICNL's style, as discussed below, makes it difficult to identify the specific contribution it has made to increasing NPO capacity at the sector level. It may be argued that the ICNL approach, fostering dialogue between government and the sector, setting priorities, being practical as well

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<sup>21</sup> ICNL has clarified its purpose with regard to this issue as follows: "We agree that there is no need to develop a substantial cadre of NGO lawyers, but this was never the point. Rather, the goal of the university courses was to expose law graduates to issues of civil society and NGO law, and thereby to shape their attitudes in such a way that future corporate lawyers would be more likely to see the value of corporate philanthropy and engagement in the community, that future government officials would be more likely to work constructively with the NGO sector, that individual citizens would be more likely to see potential value in private, voluntary action." Personal Communication from Douglas Rutzen, President, ICNL.

With the limited time available, the evaluation team was unable to test whether corporate lawyers who had taken the university course saw the value of corporate philanthropy, etc. The one corporate lawyer interviewed reported that she found the course very interesting, but could not comment on its effect on her attitudes.

as principled, has modeled behaviors important to the development of capacity, but the precise causal sequences are impossible to delineate.

### Conclusions

It is difficult and perhaps unrealistic to expect high levels of consistent NPO sector representation (and solidarity) on a more or less permanent basis. Individual NPOs are struggling to find resources, and make their own connections in government, advance their own interests, rather than becoming actively involved in overarching organizations, coalitions and national centers. Unless there is a clear threat or dramatic benefit, such as a supportive NGO registration law and process, for most NPOs there is little incentive to be actively engaged in “grand coalitions” at the sector level.

ICNL has contributed to sector capacity by enhancing local leader’s knowledge and the priority given to legislative framework issues as a critical part of the foundations for a civil society. Sector leaders in Hungary and Estonia especially were very well informed about technical issues and attributed much of their own expertise to their long and continuing relationship with ICNL.

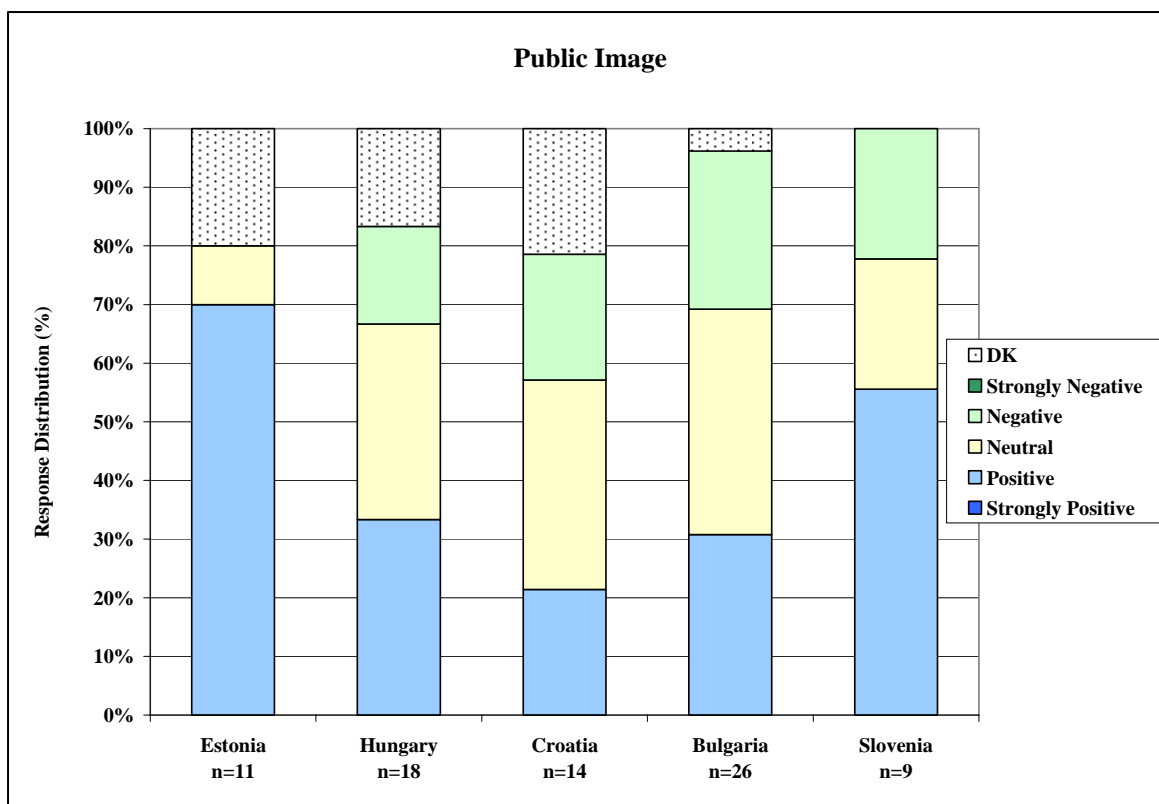
Our more general conclusion, however, goes beyond ICNL’s role to speak to the problem of developing organization coherence necessary for NPO sector advocacy, especially with regard to law and regulatory issues. Efforts to create sector wide institutions are often premature and rarely succeed, often because they start from the top down. The main exception to this has been Estonia, where the 2001 EKAK compact has established an institutional mechanism for addressing legal concerns of the sector. For most countries, a more promising approach, and one more in line with the ICNL strategy, is to focus on building capacity at the sub-sector or issue level, where there are more common substantive interests, such as environment, marginal populations, population with health service needs, populations with special educational needs, and so forth. Then if something threatens the sector as a whole, leadership from the sub areas is in place and can be mobilized at relatively little cost. This appears to be the BCNL approach in Bulgaria.

## Public Image

### Overview

The 2001 Cooperative Agreement stipulated that ICNL's activities should contribute to improving the public image of the NPO sector in the CEE region. A variety of factors had contributed to low public image of the NPO sector up to that time, including hostility or lack of support from elected leaders, a suspicion, sometimes warranted, that NPOs were just money making operations that avoided taxes, and a general historical and cultural distrust and lack of understanding of the role of civil society and volunteerism. As some put it, anyone expending the energy to organize and lead any activity must have some ulterior, usually materialistic motive for doing so. This attitude was generally reinforced when the occasional scandal occurred, or fraudulent behavior was exposed.

The link between ICNL's efforts and the improvement of public image is tenuous, a problem recognized by USAID in interviews during the development of this evaluation. It is possible to draw a long causal chain between the establishment of good legislative frameworks and corresponding NPO organization capacity and a more positive public image, but the number of intervening variables is great and unpredictable. One of the Missions not visited noted in their written response that NPOs were, in fact, abusing the tax exempt status with all manner of profit making enterprises. Hungary may be an exception to this due to the long history of the 1% law.



Suffice to say that the evidence suggests that public image may operate quite independently of the establishment of a supportive legislative framework. Only in Estonia among the five countries visited was Image rated highly, and only in Estonia do NPO leaders report that the sector has received a substantial degree of legitimacy and acceptance by the general public. In Hungary, Croatia, and Bulgaria, where the legislative framework is rated lower than Estonia, but still substantially positive, public image is seen as improving, but still either negative or very close to that. In Hungary, the enactment of the “1%” law has raised the visibility of the sector and, by legitimizing it as a suitable option for public funding, has probably helped to improve the sector’s public image. In Croatia, NPOs continue to suffer from being branded as anti-war “traitors,” as one leader put it. Surprisingly, more than half the Slovenia respondents rated NPOs as having a positive public image.

### Conclusion

Developing a supportive legislative framework may be not be a sufficient condition for a strongly positive public image of the NPO sector, but without such a framework, the legitimacy of the NPO sector will always be called into question and its development hindered. More important factors have to do with the relationship between government and the NPO sector, and the extent to which NPOs advance their own self regulation, accountability and public educational efforts. On the other hand, very lax supervision, whether by NPO leaders or by the state, may contribute to abuse of the special position of NGOs in society as public interest or public service organizations.

## Regional Connectivity

### Overview

The team explored the importance and status of regional connectivity in regard to the strength of “connections” of civil society to the external world – neighboring countries, the EU, the U.S. and to global networks in general. The term “connectivity” can convey a range of relationships from partnerships to networks to occasional contacts. The team’s assumption is that such connections are vital to the development of civil society, providing external ideas and pressure that will inspire both NPOs and government to improve the enabling environment for a more vibrant civil society. In addition, funding opportunities often can be found in international circles and through partnerships.

“The third sector has to survive and these contacts mean fundraising opportunities. The NGOs need money through these contacts more than they need expertise. When you are in international circles you know what is going on with donors and how funding flows are or will be directed. You can prepare yourselves with ideas and practical projects for the times to come. Unfortunately, most Bulgarian NGOs aren’t following this pragmatic approach.” NPO, Bulgaria

### Findings

- NPOs in border areas tend to have cross-border relationships and partnerships due to grant-maker requirements. However, those relationships stagnate when funding is not available.
- New EU member states have focused much more on western European contacts in the past but now that their “place” is secure, they are open to fostering contacts with other eastern and southeastern countries – but see themselves as models and mentors rather than equal partners.
- In non-EU member states (ex. Bulgaria, Croatia), NPOs remain focused on funding and survival and thus mainly value external connections as they relate to potential funding. At the end of the day, the NPOs in these states feel that external connections are useful but because they have a lot to do in their own country, the external connections are not the most important emphasis for civil society.

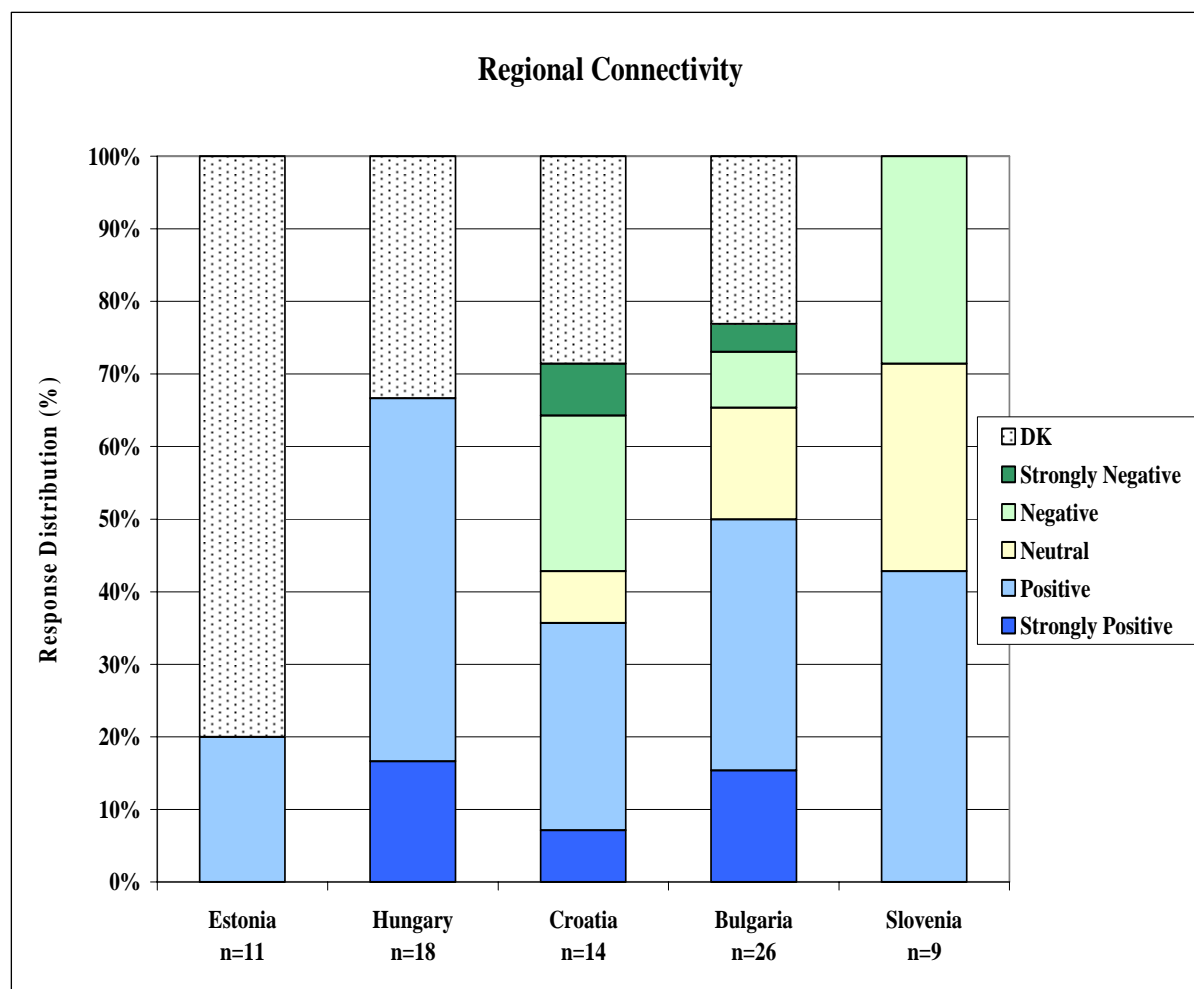
The connectivity question also provoked reflection on the nature and roots of civil society in the region, since most countries in the region have had similar experiences with the development of civil societies in their countries after 1990. Both Europe and the United States have been heavily involved in promoting democratic developments in Eastern Europe. A strong emphasis of U.S. support has been the development of an independent civil society. The EU has also focused on this but not quite to the degree and scale of the U.S. during the 1990s. According to interlocutors in the region, this has meant that civil society structures in the region have a heavy American influence. A great degree of American civil society funding went towards advocacy and government watchdog activities. New EU Member States note substantial changes to their civil society environment as U.S. funders disappear and European sources of funding become the main financial pipeline for civil society organizations.

“Connectivity is important to feel like a part of the world – not a Balkan island – in order to gain a global sense of importance.” NPO, Bulgaria

One respondent explained,

“The Anglo-American approach is to support a highly institutionalized and highly independent civil society...In Europe, NPOs are seen as key government partners, especially for service delivery, but the independent voices of civil society – the watchdogs and human rights organizations – have trouble finding financial support.”

While, it is *not* true that European funders do not promote or value an independent civic sector, thus far, it appears true that the EU funds most immediately available to new accession countries cover different areas than previous U.S. or EU PHARE democracy oriented grants. The EU focuses accession funds on employment and large projects, channeling money through



government.

The reason this discussion is of interest in the context of regional connections is the fact that across the region, the countries the team visited talked about the same funding challenges and same fears regarding the differences in a more “European” approach, despite the fact that their common goal is to be a part of the European Union. While NPOs want to contribute to a stronger Europe, they also want to hold onto some of what they perceive as the positives of their recent experience with democratic development (perhaps because it is something that distinguishes

them from older European Member States). The following text box illustrates one of the predominant NPO fears in the evolving funding environment:

Although the changes to the funding environment will not wipe out the independent voices of civil society organizations, it is likely that funding will be more limited for organizations that see their main mission as acting as a check and balance to government, fully independent from government. The consensus on the ground is that civil society in the new Member States will evolve, for obvious and practical reasons, more and more towards the “European model.”

“Diminishing the line between the third sector and the state in the European tradition will weaken the NGO identity – it will be harder to distinguish NGOs from GONGOs. In ten years you won’t have the lively, dynamic, aggressive, clear-cut, outspoken sector that is understandable to the public sector.” NPO, Bulgaria

“Hungary has similar issue to other new accession countries and cooperation is needed among these countries to change the EU model.” NPO, Hungary

Respondents expressed a desire for new members to join together and influence the European model, rather than allow that model to totally overshadow the American-influenced characteristics that they like of the civil society that has developed over the years. Although Europe seems to have heard some concern and has offered some

transitional funding for civil society advocacy, watchdog and civic education activities in new Member States, the level of funding will not replace the exiting funding.<sup>22</sup> Sadly, most NPOs were skeptical that NPOs in new and aspiring Member States could muster the necessary regional cooperation for a collective voice and lobby regarding the importance of maintaining a “mixed” civil society model.

The cautious attitudes of aspiring member states partially explain why it would be difficult to garner a regional voice on these issues. In Croatia, one respondent noted that Croatian NPOs self-censor public statements of concern about losing the American-influenced traditions they have developed through extensive capacity building programs. “Everyone knows that being an EU member is better than not being an EU member,” noted this respondent – regardless of the civil society approach. For this reason, NPOs fear being perceived as anti-European – they want

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<sup>22</sup> In February 2005, the European Commission Directorate-General (DG) for Justice, Freedom and Security issued a call for proposals for a preparatory action (PA) to support civil society in the ten new members with a total 2004 budget of €3 million (with a maximum budget of about €190,000, of which the EU will pay up to 80%) for one-year activities. The call explained that this PA “is of particular importance, since the work of the NGOs in the field of fundamental rights differs significantly from government contracted service delivery, carried out by NGOs and funded through other EU programmes. Alternative funding mechanisms (such as private foundations) are not yet sufficiently developed in the ten Member States. For this reason, many NGOs [...] are confronted with particular difficulties in securing the minimum level of finance needed to undertake actions. A culture of corporate and individual philanthropy in support of human rights and democracy should therefore be developed.” Apparently, in December 2005, the DG for Justice made two awards in each country. Although the award of grants was late and the NGO communities in many of these countries not entirely aware of the opportunity in a timely manner (as reported by key advocacy institutions in some visited countries), this represents a positive move and the new Members should gather forces to collectively emphasize the importance and value of this type of funding.



to help their country along the road to accession and do not want to jeopardize the process. This means that even if they clearly see the potential losses, it is better to stay quiet now than to challenge the status quo by advocating for changes to European traditions.

One international agency respondent commented that maybe greater regional connectivity could help increase the political influence that new and aspiring Member States have with the EU. Another international agency added that it could also help strengthen ability of the region to influence national governments in the region itself, since they compare themselves to one another. One can only hope that new Member States, together with American and European donors will work together to create a “blended” civil society approach in the “new” Europe.

### ICNL’s Role

ICNL and ECNL enjoy close relationships with a range of governmental and non-governmental actors in many different countries. Civil society actors across the region recognized this as an asset and felt that ICNL can help link them with other professionals and experts. ICNL also does much to foster regional and international connectivity through its sponsorship of study tours, seminars, and global conferences such as the recent Global Forum on Civil Society Law. Many stated that with its exceptional regional relations, ICNL could play a major role in intensifying regional connections through dialogue events.

### Conclusions

Donors play *the* key role in inspiring regional connections, as NPOs follow funding and respond to criteria for regional linkages and partnerships. For this reason, donors need to stay focused on the value of regional connections and the impact that their funding requirements play in creating linkages across borders. Neither donors nor NPOs seem to have fully thought out the range of reasons for regional connections (beyond information and best practice exchanges) and certainly have not begun to explore the range of potential for Eastern European civil society to advocate together at the EU level.<sup>23</sup>

“The Croatian NGO community is not externally oriented as a sector although some NGOs do have external connections and some donors require partnerships with neighboring countries. External contacts would be useful to share experiences, motivate NGOs to develop new activities and open their minds to new ideas and to break political barriers. We need to recognize that NGOs throughout the region are dealing with the same problems, especially as they relate to environmental and social issues.” NPO, Croatia

“Donors that require partnerships do influence the scene – NGOs will establish regional partnerships for funding. The EU offers big incentives for regional partnerships.”  
International Agency/Donor

<sup>23</sup> It is important to note here the key role of fostering advocacy at the EU level that the Soros network continues to play, even as Soros withdraws funding. Many Soros spin-offs (foundations and institutes that have survived the loss of core funding) are focusing on this very issue – usually related to issue-based advocacy, like mental disabilities or family planning.

“While larger NGOs are part of international networks, the majority of Slovene NGOs have a local orientation and are not structured for international cooperation. It is always hard to find any Slovene representatives at an international conference. Most organizations simply don’t have the capacity or funds to participate in international networks. But they need to be more connected to CEE countries – the majority of change is happening there and it is comparable to Slovenia.” NPO, Slovenia

## ICNL's Approach

### Findings

Respondents in the four countries where ICNL had been active were asked to comment on the ICNL approach to providing assistance. This question had to do with the “style” by which ICNL delivered technical assistance and training, rather than the impact of that assistance dealt with in previous sections.

Responses can be grouped into five major attributes. ICNL was seen as:

- Authoritative; based on expertise and deep commitment
- Educative; bringing international best practices to bear
- Timely; ability to move quickly into an active facilitative role when the opportunity arises
- Responsive; never imposes responsibility or pushes a “solution”
- Inclusive; does not get trapped into factionalism but actively promotes dialogue with all stakeholders.

ICNL's authority, (based on technical expertise and experience) has been effectively used to facilitate a meeting of minds and broker various interests in the process of developing more appropriate laws and regulations for civil society. As the question by question findings above indicate, until recently with the establishment of ECNL and, in Bulgaria, BCNL, ICNL was the only organization singularly focused on this issue, with a track record extending as far back as 1994. Respondents who had worked closely with ICNL were nearly unanimous in their identification of ICNL as a key and critical player in helping develop supportive not-for-profit legislation in the northern tier countries, as well as more recently in Southeastern Europe.

By providing a regional program modality for its support, USAID facilitated a relatively low cost and efficient means for providing technical assistance in a timely and flexible manner.

Interviews with respondents who have worked with ICNL stress that ICNL does two things very well. First, it ‘educates and informs’ by bringing relevant world wide experience and best practices to bear on legal development issues, not just the American experience. Second, it actively develops relationships with all key players in the legislative process, NPO leaders, government officials and parliamentarians. ICNL's approach recognizes that simply providing informed commentary is only the first step in achieving results.

While ICNL may be described as an active partner, it has a reputation of never imposing or forcing solutions on its clients. Rather, it uses its authority and persuasiveness to lead local leadership to an acceptable solution that, in the end, will be theirs. This stress on local ownership and responsibility was repeatedly stated by key informants.

For USAID Missions, the ICNL role has been well received. The Missions not visited by the evaluation team completed a mailed questionnaire, in which one Mission rated as “somewhat important,” four said “important” and cited specific examples, and two Missions felt that ICNL's role was “essential and critical” in the efforts to develop sound NPO legislation.

By operating in a demand driven and responsive manner, respondents report that ICNL's technical advice and suggested legislative solutions have a higher probability of being “internalized” or “owned” by the local governments and by NPO leadership groups working for legislative reform.

## Conclusion

ICNL has a unique comparative advantage in that it has been the only authoritative source of legal and legislative development assistance for the NPO sector that has been consistently active in the CEE region. Its approach and style is clearly valued by its sponsors in the USAID Regional office and in the Missions where “buy in” has occurred, as well as by the extensive network of NPO leaders, government officials and political leaders in the CEE countries.

What contributes to this very positive appraisal? Some of it has to do with the personal attributes of the people who work for ICNL and its affiliates. They exude a special combination of expertise, intelligence, commitment to values, respect for others, and a self effacing quality that is refreshing in an arena where prima donnas are numerous.

Another possible explanation is that USAID constructed a regional approach to funding ICNL, especially in the 1994 – 2001 period that made it possible for ICNL to be flexible, responsive, and strategic in its approach to working through local partners and affiliates to gain results. ICNL has been a constant partner and counselor, but never a live in “Mother-in-Law.” It has avoided the pitfalls of having to establish local project offices in each country. This has kept expenses down, but it has had the more important advantage of keeping responsibility and ownership where it counts, in the hands of the local leadership.

## **USAID Management and Perception of ICNL's Role**

USAID has a number of “approaches” that it uses to program its assistance. The approach taken in Central and Eastern Europe with the ICNL agreements was a regional one – for which some missions contributed their own bilateral funding to the regional agreement – and then received services from ICNL throughout the period of their bilateral funding contribution. This is interesting to compare with the more traditional approach of including ICNL as a technical assistance provider for legislative development as part of a subcontract under a larger grant for strengthening civil society, which is currently the case in Central Asia and some countries in SEE.

Both approaches have their merits and the choice of approach often hinges on available funding and management capacity of USAID. However based on this evaluation and another one carried out just previous to this which looked at the USAID-funded civil society program in Central Asia, the regional approach in the case of an organization like ICNL seems to offer more results, flexibility and creativity than the subcontractor approach which ties ICNL results to a larger program and puts them under the management of another contractor with a large array of project objectives.

Advantages of including ICNL as a subcontractor include:

- More day-to-day contact with other implementers of other USAID democracy programs;
- Less management responsibility for USAID staff in regard to the programs; and
- Consolidation of resources (some guaranteed synergies).

Disadvantages of including ICNL as a subcontractor include:

- Less creative responses because they are part of a larger strategic plan – and are not always consulted about the development of the larger strategy;
- Need to contribute to specific results of the prime contractor and therefore do not have the flexibility to work where and when the best results can be achieved;
- Tied to geographic spots of prime contractor's proposal and to certain partners – rather than spreading services to underserved areas and hooking up with appropriate partners as necessary and possible; and
- Position of “honest broker” of dialogue between civil society and government can be compromised when associated too closely with other programs that provide services to NGOs primarily.

### Conclusion

Looking at these differences in part explains the extraordinary success that ICNL has had in Central and Eastern Europe. The arrangement allowed the Center to put its energy into the places where the best results could be achieved at any given time and enabled them to create partnerships in the countries based on the needs of the moment. ICNL has proven itself a dynamic and creative responder when left to its own wiles. In contrast, the Central Asia ICNL program is much more formulaic and the staff has little opportunity to follow up on any creative impulses. It would be interesting to have a chance to apply the regional approach to Central Asia and see what type of ICNL program would emerge from that framework. It would surely be different from the program that is currently running.

## Legacy Organizations

### Overview

As USAID continues its withdrawal from the region (Croatia and Bulgaria in 2007) it has developed an interest in its “legacy.” The USAID Slovakia web page list nearly 100 USAID legacies, ranging from various NPOs to academic programs. Assistant Administrator Kent Hill defined Legacy in his testimony to Congress in 2004 as a “long term impact” of USAID’s programs.

Following this definition, ICNL’s legacy is the substantial achievement of helping to establish positive NPO legislation in most of the CEE countries where it has worked.

It has also taken important steps to establish two “institutional affiliates,” the European Center for Not-for-Profit Law, ECNL, and the Bulgarian Center for Not-for-Profit Law, BCNL. Both organizations are considered by ICNL, and USAID, as important links in establishing a continuous capacity to provide further assistance to NPOs through out the region.

### ECNL

The European Center for Not-for-Profit Law was established with USAID support in 2003. Its Director is Nilda Bullain, a Hungarian lawyer with long experience in the development of civil society in Hungary and other CEE countries through her previous work as an associate with ICNL’s Budapest office. ECNL is an affiliate of ICNL, with the ICNL President serving as representative of the primary “quota-holder.” The ‘quota-holder’ meeting is the governing Board for ECNL<sup>24</sup>

However, ECNL has developed a euro-centric work agenda, and respondents in Hungary especially were able to identify ECNL and especially, Nilda Bullain. It has also been successful in developing its own funding base.

NGO leadership in Estonia knew of ECNL, but said their contact was with ICNL, largely because ECNL was formed in 2003 after U.S. assistance to Estonia had ended. In Croatia, ECNL was not known by many of the A list respondents, and in Slovenia, ECNL was an unknown entity. On the other hand, where ECNL has begun to engage with local NPO leadership under USAID civil society projects, ECNL is known and expected to continue the work of ICNL. As one USAID Mission put it, there

“The issues that remain open regarding the implementation of the amended Law on Associations and Foundations are being addressed under USAID’s new Civil Society Strengthening Project. The European Center for Non-Profit Law (ECNL), an affiliate of ICNL, is one of the implementing partners in this Project. ECNL will facilitate the efforts of ...NGOs to advocate for a more enabling legal environment for NGO sustainability. ECNL will also provide direct technical assistance to lay the groundwork for the implementing regulations once the amendments are enacted.”<sup>25</sup>

<sup>24</sup> In practice, the “quota-holders” are similar to a Board of Directors, and the primary quota-holder is akin to the Chairman of the Board.

<sup>25</sup> Written response to Special USAID Questionnaire, November 2005.

## BCNL

The Bulgarian affiliate, BCNL, was established in 2001 and is considered by respondents in Bulgaria to be a major player in the overall development of the sector, especially in relation to the government and the parliament. BCNL is actively working with parliamentary leadership to develop legislation, and provides legal expertise to other USAID projects such as the EWMI Judicial Strengthening project. It has received a grant from the U.S. Embassy Democracy Commission for the just completed handbook on Charitable Giving in Support of the Arts. It also provides legal counsel to NGOs on an ‘affordable’ fee basis. BCNL is very well known in Sofia, and their technical expertise is well regarded.

## ICNL-BCNL-ECNL Relationships

The leadership from all three organizations describes their relationship as positive and mutually beneficial. ICNL President describes the relationship this way:<sup>26</sup>

“As background, from ICNL's perspective, we are committed to empowering ECNL. Over the years, we discussed our relationship with ECNL, and we consider ECNL to be our primary technical assistance provider for Europe. That said, we also recognize that occasions will arise when ICNL will take the lead because of financial or programmatic reasons. **But we consider ECNL to be the prime organization in Europe.**

Funding is an interesting issue....there is continued interest in ICNL support on various projects. Sometimes it will be ad hoc. For example, we received an inquiry this morning about the comparative treatment of "sponsorship" versus "donations" in response to an extremely urgent request from Macedonia. Other times, it may be more substantial, like working together on a draft law.”

Nilda Bullain, Director of ECNL, describes the ECNL – ICNL relationship as follows:

Already for the past two years we have been operating in many ways independent from ICNL whether USG funds were involved or not...but at the same time we have remained and hope to remain closely affiliated with ICNL. So I don't think there is a default policy in place as to whether USG funding "should" or "should not" go to ECNL/BCNL "instead of" ICNL. In fact, ICNL currently has a project in Bulgaria where BCNL is a local partner (judicial reform), and is also involving ECNL in projects for this region (e.g. a research on requirements for NGOs that may receive tax deductible donations across Europe). At the same time, **both BCNL and ECNL are able to generate independent funding and channel some of that to ICNL when ICNL's added value is needed.** In sum, I don't see this transition as a "replacement" but rather as an evolving opportunity for both (all three) organizations to engage in law reform and respond to emerging needs most effectively. We as a network are now in a better position to respond to different donor and beneficiary preferences due to a more diversified institutional framework.

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<sup>26</sup> Douglas Rutzen. President, ICNL. Communication with Evaluation Team 12-01-05

## Conclusion

The relationship between ICNL and its affiliates is positive, mutually supportive, and not overly redundant. Each brings to the task a somewhat different set of assets. ECNL is becoming a focal point for legal analysis and policy reform in Eastern Europe and is providing that service through Mission funded USAID activities in several countries. BCNL has become an active advocate and service provider for continuing legal and institutional development of the NPO sector in Bulgaria. ICNL, in addition to its expanding array of programs in other countries, continues to provide the kind of comparative analysis and technical support that an organization with a near global reach can provide. It also continues to receive direct requests, sometimes on an informal and ad hoc basis, for advice, assistance, and commentary.

Because ECNL is developing a regional profile in a region where, as in Estonia, ICNL was the major factor in NPO law development, it will take longer for it to establish its own identity and agenda distinct from, but not disconnected from ICNL. In countries such as Macedonia and Romania, where ECNL is a sub-contractor on civil society projects, ECNL is being viewed as a key component for further development of NPO law. BCNL is building on a strong history of sector activism and, with its single country focus, has already succeeded in developing its unique identity in one country.



## General Conclusions

### NPO Sector Development

The NPO sector in Central, Eastern and Southeastern Europe has demonstrated considerable development, recognition, and some legitimacy as part of the overall socio-political fabric of many of the nation-states making up the former socialist bloc. That this has occurred in a scant 16 years, or in the Balkans region less than 10 years, is a testimony to the commitment of local leadership, and to the stewardship of many donors, including USAID and its implementing partners, as well as several important private foundations and, more recently, the EU.

The overall level of progress in establishing civil society is highly variable still. Context and political history have had a powerful influence on the development of civil society in different countries and how it is perceived by the government and publics. Perhaps in only a few northern tier countries it may be concluded with confidence that key elements of the NPO sector are sustainable and will survive the withdrawal of substantial outside donor assistance.

While the first generation of laws for a supportive legislative framework is in place, there are a number of second generation issues that bear especially on the long term sustainability of the sector. As procedures for fee-for-service, government contracts and grants, and membership fees are clarified and become productive, the public funds now becoming available may become more productive and fairly distributed.

However, the evidence also suggests that two elements of a robust civil society will face difficulties as foreign donor (private and public) financing diminishes. It will become difficult to sustain 1) the independence of the sector as a citizen initiated organizational modality that exists between the citizen and the state, and 2) the advocacy-monitoring or watchdog function that characterizes many NPOs in the West, especially in North America and Britain. The absence of diverse funding sources will work to drive many NPOs into a politically correct relationship with government, with public funding centered, for the most part on the delivery of services. The test for the value added of NPO service delivery will be efficiency and quality compared to other means, private, commercial or government. The values of democratic participation, individual initiative and local volunteerism many associate with the civil society role in a democratic polity may well be lost.

### ICNL impact on the development of the civil society sector in the CEE and SEE countries

We conclude that the hypotheses underlying the ICNL program were in the main correct. The impact of ICNL's assistance is clearly discernable and, in some cases, may be said to have been a critical factor in the development of a supportive legislative framework for the continued development of the NPO sector and civil society in general. In other dimensions of civil society development, ICNL's impact has been more indirect and subtle.

Our detailed analysis above also demonstrates that ICNL has played an important role with respect to stimulating heightened awareness and expert knowledge of the importance of legislative framework issues.

All agree that establishing a supporting legislative framework is a necessary if not sufficient condition for the development of the NPO sector. USAID and other donors have invested heavily in civil society capacity building more generally, an investment which ICNL has been able to use well in its own efforts to advance the process of passing supportive laws.

The impact of ICNL's activities is consistent with the larger interests of the United States, Europe and other democracies, all of which have a stake in the establishment of democratic polities in the CEE region.

Future value added to having ICNL remain 'in the game' through some means

There are five persuasive reasons to maintain some form of ICNL engagement in the CEE/SEE region beyond the withdrawal of USAID Mission based development programs.

1. The legislative agenda is by no means complete. Significant challenges remain, especially in relation to the issue of developing a sustainable NPO sector. ICNL's unique capacity to mobilize information, best practices, and to lend its authority to the legislative development process will continue to be useful.
2. ECNL and BCNL have emerged as the lead organizations for continuing to provide technical assistance, organizational initiative, and training relevant to the further development of NPO legislation and, increasingly, to other aspects of civil society development. ECNL and BCNL as affiliates of ICNL continue to rely on ICNL for a variety of purposes, especially as a window to the broader international experience as well as to that of the United States.
3. Most of the countries of the CEE region have made great progress in establishing the institutions and formal legal frameworks necessary for the formation of a democratic polity. The NPO sector has been a part of this development. There are important challenges that could threaten this progress, among them the emergence of regressive political leaders, subordination of the NPO sector to state interests, and the diminution of the advocacy and watchdog functions performed by many NPOs in other democracies, especially in the North America and the United Kingdom. ICNL and its affiliate partners have been active voices for an independent NPO sector, and have developed regional and international networks of experts and committed leaders who share the same values.
4. The development of civil society in CEE and SEE has been influenced by international experience and the special circumstances of emergence from the socialist regimes of the past. The region's NPO leaders, as they move towards becoming an integral part of Europe, recognize that their development experience gives them a special perspective and approach that may be different from that of more traditional European not-for-profit sectors. The CEE NPO leaders want to maintain a relationship with each other, to the U.S., and to the global NPO sector on terms that recognizes their experience with a development path that balances state sponsorship with private sources of funding necessary for an independent sector. ICNL/ECNL/BCNL was almost unanimously desired for continued assistance due to their approach and their ability to bring international standards and interest to bear in a responsive manner. A continuing connection with ICNL is part of a larger interest in maintaining an independent NPO sector that can effectively monitor government, advocate for public interest issues, as well as becoming more professionally competent providers of needed public services.
5. Having invested heavily in civil society as part of the overall fabric of a democratic society and polity, all democratic governments and private foundations have, or should have, a public interest in finding ways to maintain that investment and enable citizens to participate in its benefits over the long haul.

## Recommendations

The team has three recommendations. Implementing them will require policy dialogue within USAID, and with the Department of State, the National Security Council, and the Congress. They will also require a dialogue and active partnership with other democracies, especially in Europe.

This evaluation was not driven by normal circumstances relating to whether a program was well managed or achieving impact, or might if it were restructured as is often the case in USAID evaluations. USAID's Regional Services Center in Budapest has focused the evaluation on impact and on the future. Left alone, ICNL will reduce its activities in Eastern Europe, continue to provide services in other parts of SEE and NIS as a sub-contractor to other entities, and will work to expand its donor base as well as its geographic domain in other parts of the world.

At issue here are two concerns that motivated this evaluation from the beginning. First, has the USAID investment in ICNL and other civil society development efforts produced sustainable results of a character consistent with the model of civil society as an independent third sector? We have concluded that the answer is "yes, but." Second, is it in the broader interest of most first world democracies to participate through ICNL and related organizations in the further development of civil society in the emergent states of Eastern Europe as well as the NIS, and other regions struggling to create viable democratic polities?

Our recommendations reflect our answers to these questions.

1. ICNL and its affiliates should be retained through some sort of CEE and NIS region-based mechanism, whether through the Europe and Eurasia Bureau, a special ICNL line item in the State Department appropriation,<sup>27</sup> or a Private-Public Trust or Foundation that would earmark funds for this purpose. For relatively modest funding, ICNL and its European affiliates would be able to maintain access to NPO leadership throughout the region, and, with its affiliates, continue its highly efficient responsiveness and participation in the further development of a robust and independent NPO sector. The Assistant Administrator for the USAID Europe and Eurasia Bureau testified to Congress in 2004 that:

"...occasionally, funding for future program impact will be sought after Missions close to ensure the sustainability of gains made during USAID presence. Such legacy mechanisms include partnerships with U.S. private sector institutions and other programs that do not require large amounts of recurrent funding or USAID administration."

ICNL fits this criterion.

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<sup>27</sup> The Asia Foundation receives core funding in this manner, in addition to being awarded cooperative agreement grants from USAID

2. The United States and the EU should work with private foundations to establish an International Civil Society Partnership Foundation or similar modality for the purpose of providing financial and, where needed, technical support to the continuing development of NPO sectors, the withdrawal of formal foreign donor assistance notwithstanding. Maintaining and deepening democratic institutions, behaviors and values should be a long term commitment for those nations that have already invested so much in bringing the democratic nation building process this far. Supporting an independent, participatory and public interest orientation of the NPO sector is a critical part of this challenge.
3. ICNL, perhaps in tandem with several other U.S. and European democracy organizations, should be encouraged to expand its activities into other regions where civil society legislation is lacking, weak, or non-supportive. The increase in threats to civil values and democracy are found in the increasingly sophisticated organizations and operations that threaten the integrity and very existence of smaller nation states, not only in the CEE/NIS region, but in the Mid-East, Africa and Southern America. Organized civil society is one of the potential bulwarks standing against corruption, trafficking, money laundering, and terrorism. Strengthening civil society is in the interest of democratic nations world wide. ICNL has identified and developed the knowledge and the legal experts who have valuable technical experience which can be shared with other regions of the world.

## **Lessons Learned and Re-confirmed**

1. Democratic development is a long term, non-linear transformation process which requires years of institutional learning and reformulation of some deeply held cultural attitudes and values. Unlike market based economic development, which is based on fundamental and widespread desire to have more money and a better material existence, the desire to be 'free' does not translate easily into the complex set of values and behaviors associated with a functional democracy. Respect for the rule of law, active participation in public life, learning to compromise, distrust of authority but developing trust with other citizens outside the family and kinship group, are but a few of the elements necessary to a democratic polity.
2. The development of effective Rule of Law, and in this case, the legal framework for a robust civil society, is a process that goes well beyond passing legislation prepared by enlightened experts, domestic and foreign. When the process is 'owned' by the citizenry and is consistent with the broader transformation toward a democratic polity, foreign assistance and expertise can be extremely useful, especially at those critical junctures when issues and controversies are joined and must be resolved. At these points, an outside perspective and an 'honest broker and counselor' can facilitate compromise and progress.
3. In a non-linear and episodic process such as democratic development, a relatively low key, but highly flexible foreign donor assistance approach offers great advantages over the more rigid and linear approach characteristic of most foreign assistance projects. The organization of ICNL assistance through a regional program allowed ICNL to move as quickly or as slowly as circumstances in each of the countries required.
4. By maintaining a sustained but focused presence over a number of years and in multiple countries, an assistance organization is able to develop networks of trust and cooperation within the region and between local leadership and the assistance organization. The creation of social capital greatly enhances the value of technical advice and training, as well as creating greater receptivity to the advice and counsel received.

## Annexes

### Annex I

#### Scope of Work

#### ICNL Evaluation

Oct-Dec. 2005

Oct.12, 2005

#### I. Introduction

This evaluation has been requested by United States Agency for International Development (USAID) and the International Center for Not-for-Profit Law (ICNL) as an end of project evaluation. Budget for the evaluation was provided in the ICNL cooperative agreement with USAID dated May1, 2001. The Agreement provided \$4,450,185.00 to ICNL to provide “support for a program to strengthen the legal and regulatory environment for NGOs in the CEE” as described in the Program Description in Attachment 2 of the Agreement. The Agreement was extended beyond the agreed date of 4-30-2004 and will now terminate December 31, 2006.

During this period, two independent but related organizations became established; The European Center for Not-for-Profit Law and the Bulgarian Center for Not-for-Profit Law.

Both are independent organizations, but affiliated with ICNL. In this document the acronym “ICNL” will be used to refer to all three organizations, unless otherwise specified.

Although the principal purpose of the funding was to support a CEE Regional program, funds were available for CEE/NIS Cross Boarder Initiatives. The Cooperative Agreement also provided a mechanism for mission-specific contributions, allowing ICNL to address country-specific needs in greater depth.

This Evaluation Scope of Work is derived from several sources: a Draft Concept for the Closeout Evaluation of ICNL Regional Agreement, not dated but prepared by a USAID EE committee, the Cooperative Agreement Award, Attachment B: Program Description of ICNL Technical Proposal, January 2001, and discussions with USAID CTO Monique Nowicki, Heather Goldman, ICNL Douglas Rutzen, and ECNL Nilda Bullain in September, 2005.

A previous draft was submitted by the proposed evaluation team. It was reviewed by USAID and ICNL and discussed with the team. This final draft is submitted as a deliverable under the contract between ICNL and Richard N. Blue, Team Leader for the ICNL Evaluation.

The Scope of Work differs somewhat from USAID Scopes of Work. In addition to identifying the key questions/issues to be assessed and answered,

- It does contain a more detailed evaluation design and work plan based on discussions with USAID and ICNL.
- It also contains a preliminary annotated outline of the final draft report that will be submitted to ICNL and USAID.

- It does not contain an extensive discussion of the ICNL project background. The technical proposal of 2001 is attached and serves the purpose of setting out the main objectives, strategy, and expected results from the project. Also, the team has access to extensive documentation including quarterly reports and annual reports prepared by ICNL for USAID. Finally, the team reviewed documents related to extensions granted to ICNL in 2004. These documents provide sufficient background information to inform the evaluation team, and will be used to prepare the final report.

## II. Problem Statement

Although much progress had been made in developing a legal and regulatory framework for the NGO sector in the CEE from early 1994 during the first ICNL agreement with USAID, two challenges were emerging in 2001 to warrant continued attention to this issue: first, the resolution of several conflicts in the Balkans opened up new possibilities for NGO development in Albania, Bosnia-Herzegovina, Montenegro, Serbia, and Macedonia, in addition to the possibilities of utilizing CEE experience to support NGO development in NIS countries; second, some countries had experienced highly visible scandals within the NGO sector, calling into question the legitimacy of the sector, and opening up an opportunity for regressive elements to bring the sector under government control. An additional challenge was in the recognition that changes in collateral laws regarding taxation, labor, business enterprises, were needed if the legal basis of NGO financial sustainability was to be established.

These issues and challenges were sufficiently compelling to warrant a second round of USAID support for the ICNL Regional Program. This evaluation focuses on goals and objectives of the second USAID-ICNL Cooperative Agreement signed in 2001, with amendments and extensions through 2005.

## III. Evaluation Team

The team consists of Richard N. Blue, Marguerite (Mara) Galaty and Andrew Green. The team leader, Richard Blue, is a USAID Senior Foreign Service Officer (ret.) with substantial evaluation experience in USAID and as an independent evaluation consultant.

Mara Galaty joined USAID as Senior Democracy and Conflict Advisor for the Bureau of Europe & Eurasia in April 2004 after working for four years as the global Director of Civil Society for the international NGO Mercy Corps. She has served as an independent consultant, management and evaluation specialist to a variety of European organizations, including the Council of Europe. She served with Peace Corp in Bulgaria and is fluent in Bulgaria and other languages. She holds a Master's degree from John Hopkins (SAIS) and a bachelor's degree from the University of Wisconsin-Madison.

Andrew Green is a Democracy Fellow in the Office of Democracy & Governance, focusing on post-communist civil society. His primary responsibility is to implement a research project to gauge the impact of past democracy assistance programs. Before USAID, he was the assistant director for Johns Hopkins Comparative Nonprofit Sector Project. He has held research and teaching positions at the University of Southern California. His research focus includes developing indicators of nonprofit sector legislation and analyzing the linkage between civil

society and democratic development. He holds a PhD in political science from the University of Illinois at Urbana-Champaign.

#### IV. Evaluation Questions

The evaluation is divided into two, interlinked, parts. The initial focus will be on ICNL's accomplishments during the second Cooperative Agreement (2001-2005) but with reference to the accomplishments under the first agreement. This will be the "retrospective" part. The second focus will be "prospective" in that it will identify trends and issues, as well as U.S. interests that warrant continuing engagement between the U.S. civil society and the emerging NGO sectors in Central and Eastern Europe and in the Newly Independent States. There is also an interest in the type of approach, or "model" that ICNL represents as a modality for other forms of USG assistance and engagement.

The retrospective part of this evaluation task will provide findings, conclusions and recommendations in answer of the following key questions:

For the period 2001 – 2005 of the current Cooperative Agreement between USAID and ICNL,

1. What is the ICNL strategy for delivering technical assistance services to CEE countries, how has that strategy evolved, and what are its strengths and weaknesses in regard to its development objectives?
2. How and to what extent has the USAID Regional Program framework enhanced or hindered the effectiveness of ICNL's technical assistance activities?
3. The ICNL Technical Proposal posits 4 main objectives for which ICNL support for the development of a facilitating legal and regulatory infrastructure are causally related as necessary, if not sufficient conditions. In what way and to what extent has ICNL with its unique approach to providing technical assistance, contributed to the following Civil Society development objectives in some or all of the target CEE states?
  - a. Financial Sustainability of the NGO sector
  - b. Improved Public Image
  - c. Functional NGO – Government Relations
  - d. A more supportive NGO lifecycle (NGO registration, internal governance, and dissolution) Legislative and Regulatory Framework.
4. How and to what extent have the Cross Boarder Initiatives contributed to a stronger NGO sector in the NIS states, and to development of a regional support and information sharing network?
5. How and to what extent has the work of ICNL contributed to the establishment of CEE capacity to take ownership and solve legal and regulatory problems without reliance on ICNL?
6. How and to what extent have Legislators, Government administrators, CEE legal experts and NGO leaders attitudes evolved regarding the public image of NGOs (point 3b above) issues outlined above?



Looking to the future (prospective), using the foundation of findings, conclusions, and recommendations presented above, the evaluation team will address the LEGACY issue, by providing its best judgment in reply to the following questions:

1. What are main positive and negative trends in the ICNL task environment that may effect the sustainable development of a robust civil society and NGO sector? The response will consider the short, intermediate and long run situation as well as two geographic domains, CEE and NIS, in which ICNL has been active.
2. What are the major issues and gaps emerging from the legal and regulatory task environment that may require continued engagement by ICNL?
3. To what extent is the ICNL approach a model from which lessons may be learnt to apply to other forms of foreign assistance provision?
4. To what extent and in what way should the ICNL strategy be modified to address these evolving issues?
5. To what extent does the continued engagement of ICNL serve USAID and USG development and foreign policy objectives?
6. By what means and/or modalities might the US Government through USAID or otherwise provide financial support to ICNL over the intermediate and longer term should such support be deemed in the US interest.

## V. Evaluation Research Plan.

### Mixed Methods

The evaluation research will use a mixed method approach, by which documentation analysis, time series quantitative data sets (drawn from other sources), and data from structured – open ended key informant and stakeholder group interviews will be synthesized to answer each of the key questions set out in the SOW. It may be possible to use a survey questionnaire during the Global Forum meeting in Istanbul. (see below)

### Focus on Comparative analysis using Quantitative Data (where appropriate)

Comparison is a critical feature of sound evaluation, yet it is rarely employed in USAID evaluations.

This evaluation will use comparative analysis in several ways:

1. Comparison will be made between actual achievements and those explicit or implicit in the original agreement. This is a core responsibility of any evaluation.
2. A quantitative base line will be established and trend line data will be used to assess development of NGO sector in general as well as to identify potential issues.
3. A qualitative-quantitative base line will be established for the status of relevant legal and regulatory frameworks against which 2001 and 2005 status will be compared.
4. A measure of ICNL level of effort from 2001 to 2005 will be constructed to illustrate the extent to which ICNL has used the regional framework to maximize its limited resources.

5. A “comparative case” country, Slovenia, has been selected for analysis of the development of its framework legislation and NGO development compared to ICNL countries. Slovenia has not received ICNL support.
6. It may be possible to do some internal comparisons of responses to our questions by separating out responses from more advanced CEE countries with responses from countries where NGO legal infrastructure is still undeveloped.
7. As per the SOW, the ICNL “model” for providing technical assistance will be compared to other USAID supported programs and, perhaps, an “ideal type” normal USAID project approach.

#### Use of Site visit interview data.

Based on USAID and ICNL recommendations, the evaluation team’s field work will include on average, 3 day visits to Estonia, Hungary, Croatia and Bulgaria, each representing a somewhat different experience and level of development. These locations were first identified in the USAID Evaluation Concept Paper.

The evaluation team will rely heavily on site visit key informant data for in-depth data on program results, constraints, and emerging issues. However, key informant interview schedules will be structured in a manner to permit quantification of responses on some key dimensions. It is expected to complete 80 or more key informant interviews from the 4 countries selected for site visits. For this purpose, two lists of potential key informants have been developed; an A list of knowledgeable ICNL partners and stakeholders and a B list of leading NGO and other donor informants has been developed with assistance from USAID, ICNL, ECNL and BCNL.

#### Group Interviews

The team will also organize group interviews whereby short survey questionnaires may be completed as well as more general views solicited. We are uncertain at this time whether a rigid adherence to focus group procedures is possible.

With agreement from ICNL, the team will end its field work in Istanbul, Turkey, where ICNL will be holding the first “Global Forum on Civil Society Law”. The team will observe some of the interaction at this conference, but will devote more time to key informant interviews with attendees from NIS and other countries that could not be visited. ICNL has agreed to assist in the distribution of a questionnaire to be completed by a subset of the 130 participants, in addition to 15 to 20 additional key informant interviews.

#### Participant Rating

The ICNL team has, at the request of the evaluation team, agreed to prepare self ratings on three dimensions. First, ICNL will rate its “level of engagement” in each of the CEE countries where it has a mandate to provide assistance. “Level of engagement” is somewhat different than the standard level of effort (LOE), in that ICNL will be more holistic in its appraisal, estimating in this rating the extent to which their engagement has been more or less continuous, wide ranging, and significant in terms of the legislative framework issues involved. Second, ICNL will assess the “degree of completeness” of the NGO legislative framework for EACH COUNTRY where ICNL has worked. This assessment will use the ICNL developed NGO legislative framework check list to highlight important changes, country accomplishments, as well as ‘checking off’ more widespread and non-controversial items, such as, is there a registration law for NGOs and

Foundations. Last, ICNL will prepare for each CEE Country an “Issues and Gaps” list, which will identify major problems and gaps which need now, or will need additional attention and effort in the near and medium term.

The ICNL ratings will then be compared to other ratings available to the team as means for checking the validity of the ICNL ratings, and for enhancing the overall analysis.

#### Data Synthesis

The key challenge for the team will be to assemble data from this mixed method approach in such as way as to strengthen the credibility and reliability of answers to the questions posed in the Scope of Work. Data synthesis methods have been developed for this purpose and will be applied if feasible.

#### Data vulnerabilities

From a social science and statistical perspective, there are two key vulnerabilities. First, there is no attempt to do random sampling to a universe with known parameters, either for key informant interviews or, where possible, issuance of survey instruments to respondents. We do not know how to define a specific population that would permit generalizations in such diverse environments and sets of stakeholders. The team will at best strive for representation and balance. Second, most of the quantitative data that will be accessed is secondary data, using different methodologies with different problems. USAID has underway a major quantitative data based analysis of DG development, led by Evaluation Team Member Andrew Green. Dr. Green knows the problems well, and will avoid egregious errors in this regard.

### VI. Schedule

Oct. 1 – 31	Team planning meetings Finalize SOW and Research approach Develop and reproduce questionnaires as needed Assess and development quantitative data/indicators for baseline-trend analysis. Develop field visit logistics and interview schedules
Nov 3-6	Team members Blue and Green conduct Estonia interviews
Nov 7-17	Team members Blue, Green and Galaty conduct interviews in Hungary, Croatia and Bulgaria
Nov 17-20	Team participates in Global Forum in Istanbul and conducts interviews.
Nov. 22- Dec. 2	Team prepared working draft of evaluation report. Submits to USAID and ICNL for comment
Dec 2-20	Revisions and Final Draft prepared and submitted.

## VII. Report Outline

The evaluation report will be structured to respond clearly and concisely to the questions posed in Section IV. It will be limited to a maximum of 30 pages plus the usual annexes. To the extent possible given limiting factors of time available, inherent difficulties in objective measurement and causal attribution, the team will provide a systematic empirical basis for its findings, apply sound logic and social science theory to its analysis, and the wisdom and experience of an exceptionally well qualified team to its conclusions, recommendations and lessons learned.

The report outline is presented as a guidance outline only, and may change as the team assembles the final report.

### I. Background:

- ICNL's second cooperative agreement is ending
- ICNL has worked throughout the EE region
- Has provided training, advisory services, capacity building for local organizations
- Main objective has been to promote body of law in each state that provides the legal underpinnings to the not-for-profit sector of civil society. (or whatever from Documents
- Review key elements of Cooperative Agreement

### II. Context

- Changing characteristics of EE region
- Origins of ICNL program
- Major trends in region affecting development of civil society and not-for-profit sector from 1994 to 2005

### III. ICNL

- Evolution of ICNL approach
- Working with local partners
- Establishment of ECNL and BCNL
- Training
- Capacity Building

### IV. Theory and Strategy: ICNL's program approach

- Major assumptions
- Major strategy hypotheses and objectives (cooperative agreements and work plans)
- Model of ICNL assistance approach (input-output-results expected) how does training, advice and other inputs get translated into expected results and hypothesized impact

V. Findings: Retrospective evaluation questions answered

The ICNL Technical Proposal posits 4 main objectives for which ICNL support for the development of a facilitating legal and regulatory infrastructure are causally related as necessary, if not sufficient conditions.

1. In what way and to what extent has ICNL with its unique approach to providing technical assistance, contributed to the following civil society development objectives in some or all of the target CEE states?
  - a. Financial Sustainability of the NGO sector
  - b. Improved Public Image of the NGO sector
  - c. Functional NGO – Government Relations
  - d. A more supportive Legislative and Regulatory Framework
2. How and to what extent has the Regional Program framework enhanced or hindered the effectiveness of ICNL's technical assistance activities?
3. How and to what extent have the Cross Boarder Initiatives contributed to a stronger NGO sector in the NIS states, and to development of a regional support and information sharing network?
4. How and to what extent has the work of ICNL contributed to the establishment of CEE capacity to take ownership and solve legal and regulatory problems without reliance on ICNL?
5. How and to what extent have Legislators, Government administrators, CEE legal experts and NGO leaders attitudes evolved regarding the 4 issues outlined in point 2 above?

VI. Analysis and Conclusions

This section will focus primarily on **analysis and conclusions** with regard to ICNL achievements under the Cooperative Agreement to 2005.

VII. Prospective Lessons and USG/USAID Policy Implications. This section will provide **analysis, conclusions and recommendations** with respect to the following questions as posed in the Scope of Work above.

1. What are main positive and negative trends in the ICNL task environment that may effect the sustainable development of a robust civil society and NGO sector? The response will consider the short, intermediate and long run situation as well as two geographic domains, CEE and NIS, in which ICNL has been active.
2. What are the major issues and gaps emerging from the legal and regulatory task environment that may require continued engagement by ICNL?
3. To what extent is the ICNL approach a model from which lessons may be learnt to apply to other forms of foreign assistance provision?
4. To what extent and in what way should the ICNL strategy be modified to address these evolving issues?

5. To what extent does the continued engagement of ICNL serve USAID development objectives? US Government interests and foreign policy objectives?
6. By what means and/or modalities might the US Government through USAID or otherwise provide financial support to ICNL over the intermediate and longer term should such support be deemed in the U.S. interest?

#### VIII. Lessons Learned

This section will assess the extent to which the ICNL experience contains more general lessons that may be applicable to other foreign assistance interventions by USAID or by other donors.

## **Annex II**

### **Key Informants Interviewed**

<b>Country</b>	<b>Interview</b>	<b>Org</b>
Estonia	Hellam, Mall	OEF
Estonia	Enno, Katrin	BAPP
Estonia	Liiv, Daimar	Lawyer
Estonia	Laius, Agu	PUF
Estonia	Mänd, Kristina	NENO
Estonia	Kaur, Kaja	MinRD
Estonia	Mänd, Tuulike	TVC
Estonia	Lagerspetz, Mikko	P/BAPP
Estonia	Maira Juriska	AIESEC
Estonia	Lemmi Oro	Tax Dir
Hungary	Mora, Vera	Okotars
Hungary	Porkolab, Aniko	NIOK
Hungary	Bardos, Ferenc	NCF
Hungary	Denes, Balasz	HCLU
Hungary	Sari-Simko, Agnes	Min Just
Hungary	Biro, Endre	NCF
Hungary	Bartal, Anna Marie	PPCUn
Hungary	Gabor Posch	St Audit
Hungary	Andras Toth	Vol Ctr
Hungary	Peter Holchacker	GPS
Hungary	Nora Sasvari	MinSocl
Hungary	Katalin Ertsey	Utd Way
Hungary	Kinga Szuly	EU
Hungary	Balazs Sator	The Civil Society Development Foundation Hungary
Hungary	Eszter Markus	Environmental Management and Law Association (EMLA)
Hungary	Eva Kuti	Dept of Social Studies, Budapest College of Management
Hungary	Peter Nizak	Soros Foundation Hungary
Hungary	Istvan David	Motivation Foundation for Disabled People
Croatia	Ljubisic, Slobodan	Genl Insp
Croatia	Zuber, Marija	RiF
Croatia	Baric, Sanja	Lawyer
Croatia	Ivanovic, Mladen	UNDP
Croatia	Plavsa-Matic, Cvjetana	NFCSD
Croatia	Cigelj, Jadranka	GCO
Croatia	Mirjana Svajcer	C St Admin
Croatia	Sanja Sarnavka	BaBe
Croatia	Enrique Augado-Asenjo	EU
Croatia	Vanja Skoric	GONG
Croatia	Nives Ivelja	NGO Me, Split
Croatia	Julia Gilbert & Maja Saje	OSCE
Croatia	Natasa Skrbic	Consultant and Trainer
Croatia	Jennifer Stuart	AED

Bulgaria	Timcheva, Rayna	Microfund
Bulgaria	Kirchev, Peter	European Inst
Bulgaria	Barakova, Elitza	BCAF
Bulgaria	Hadjitimova, Mira	GPB
Bulgaria	Koshlukov, Emil	Novoto Vreme
Bulgaria	Nikolova, Iliyana	WCIF
Bulgaria	Stoikov, Mitko	Tax Dir
Bulgaria	Genchev, Georgi	PACELS
Bulgaria	Mihail Bojadiev	USAID
Bulgaria	Donka Mihaylova	MP/Znanie
Bulgaria	Desislava Bijeva	EWMI
Bulgaria	Ivanka Ganazova	Every Child
Bulgaria	Dimtar Sotirov	B Media Coal
Bulgaria	Evelina Milusheva	B Red Cross
Bulgaria	Barabar Shepard	P.A.O.
Bulgaria	Roumen Yanovksi	ACCESS Sofia Foundation
Bulgaria	Veliko Sherbanov	Open Society Institute
Bulgaria	Vessela Gertcheva	Bulgarian Donors' Forum
Bulgaria	Hugh Orozco, Maria Ilcheva, Monika Pisankaneva	Counterpart - Bulgaria Community Fund and Social Enterprise Program
Bulgaria	Ognyan Minchev	Institute for Regional and International Studies
Bulgaria	Silviya Tsanova	Agency for Social Assistance
Bulgaria	Milena Georgieva	Bluelink Information Network
Bulgaria	Ivanka Hristova	Ministry of Labor and Social Policy
Bulgaria	Ventzislav Kirkov	Bulgarian Sexual Health and Family Planning Association
Bulgaria	Nikolaj Bliznakov	Regional Union of NGOs, Plovdiv
Bulgaria	Rosica Nikolova	Caritas-Bulgaria
Slovenia	Meznaric, Irma	MinPubAdmin
Slovenia	Kokalj, Vida	MinInt
Slovenia	Kogovsek, Neza	Peace Inst
Slovenia	Ferlez, Marija	MinFin
Slovenia	Flaker, Gorana	SEECRAN
Slovenia	Sporar, Primoz	PIC
Slovenia	Huc, Marjan	CNVOS
Slovenia	Ogorelec, Vida	Inst Modra
Slovenia	Jerse, Alenka	Amnesty



**Annex III**

Key Informant Questionnaire and Rating

ICNL EVALUATION  
General Key Informant Schedule  
(revised Nov. 6, 2005)

Interviewer	Date
Respondent Organization	Location
Name	Position

Explain purpose of interview as:

- \* Learning about general development of legislative framework and capacity for Civil Society/NGO development in this country
- \* Assessing the role of foreign assistance, especially ICNL and ECNL in the past, present and future.

1. Respondent's history with NGO work
2. Respondent knows about ICNL? Yes/not
3. ECNL yes/no

I. Respondent's assessment of legislative framework

- a. Major changes if any
- b. Factors 'causing' change
- c. Current status / issues
- d. Role of ICNL and ECNL past/ present
- e. Respondents rating of general status of NGO legislative framework (1 to 10)

II. Public Image of NGOs

- a. Major changes
- b. Factors causing change
- c. Current Status/Issues
- d. Role of ICNL/ECNL (separate) past and present (if any)
- e. Other players/institutions that make a difference
- f. Rating of NGO public image (1 to 10)

III. NGO-Government Relationship

- a. Major Changes
- b. Factors promoting change

- c. Current Status/Issues
- d. Role of ICNL or ECNL past and present
- e. Rating (1 – 10)

IV. Capacity

(capacity of NGO sector/leadership and individual NGOs HERE to deal with legal and policy issues relating to their functioning as NGOs)

- a. What if any legal/policy issues relating to NGO legislation or implementation have you encountered?
- b. Who do you turn to for advise, counsel, support?
- c. How well informed about NGO role/policy/legislation are Government and NGOs here?
- d. What role for ICNL / ECNL if any?
- e. Rating of Capacity (1 to 10)

V. Sustainability of NGO Sector

- a. R's view of overall sustainability of NGO sector today versus 10 years ago?
- b. Issues and problems threatening future development
- c. Major players/factors affecting future development of NGO sector?
- d. ICNL or ECNL roles
- e. Rating of Sustainability (1 to 10)

VII. Regional Connectivity

- a. what kinds of interaction does R or R's organization have with other in region (specifically neighbors, European Union, US???)
- b. are these useful and in what way? (probe for specifics)
- c. ICNL and ECNL role?
- d. Rating of Importance of connectivity (1 to 10)

**Annex IV**

Global Forum Questionnaire

Global Forum on Not for Profit Law Conference: Istanbul, Turkey Nov 17-20

Selected Attendees.

**COMPLETE AND RETURN TO ICNL REGISTRATION DESK NO  
LATER THAN SATURDAY, NOVEMBER 19, 2005**

International Center for Not for Profit Law Evaluation Questionnaire

USAID has commissioned an evaluation of the work of the International Center for Not for Profit Law, and its affiliates, the European Center and the Bulgarian Center. The purpose of this questionnaire is to solicit the views of NGO leaders at the conference with regard to two main areas of interest to USAID: 1. the development of the legislative framework and general status of the Civil Society sector in countries where USAID has now or has had assistance programs; 2. the role of ICNL/ECNL/BCNL in the development of the legislative framework and related areas.

Your answers will be very helpful in completing the research of the evaluation team. We ask you to give us your name, organization and country, but in no case will we use your name in this report.

This survey can be completed in 20 minutes, but if you wish to provide additional comments, we have provided space for that purpose.

1. Name \_\_\_\_\_
2. Organization \_\_\_\_\_
3. Position \_\_\_\_\_
4. Country \_\_\_\_\_
5. How well do you know the work of ICNL

Know ICNL/ECNL

(Check one for each organization)

	Very Well	Somewhat	Not Well
ICNL			
ECNL			

6. Please indicate whether in 2005 you have worked with ICNL or ECNL on a project of interest to your organization or to the NGO sector in your country.

Cooperate with ICNL/ECNL

(check one box for each organization)

	Frequently	Somewhat	No direct cooperation
ICNL			
ECNL			

7. Please consider the legislative framework within which NGOs must operate in your country, including ease of registration, reporting, tax exempt status, support for income generating activities, and differentiation between different kinds of organizations (e.g., Foundations, Associations, Public Benefit Organizations). From your the perspective of the organization you represent, please rate the **overall quality** of the legislative framework in your country.

a. Very Negative b. Somewhat Negative c. Neutral d. Somewhat Positive e. Very Positive

Comments:

8. Has ICNL or ECNL been involved in helping develop good legislation for the NGO Sector in your country?

	Very Involved	Somewhat Involved	Not Involved	Don't Know	
ICNL					
ECNL					

9. How would you describe the value of ICNL or ECNL's assistance and involvement in the development of the NGO Sector in your country?

	Great value, Essential	Useful	Can't say	Not Useful	Waste of time and money
ICNL					
ECNL					

10. What are **most important** law related issues still facing the NGO community in your country? (Circle 2 from the list below)

- Clarify distinction between Foundations, Associations and Public Benefit Countries
- Better legislation to permit NGOs to conduct income generating activities.
- Clarify and expand tax exempt status for NGOs
- Create more tax incentives for corporate and private charitable giving.
- Establish a transparent and fair system for government financial support to NGOs
- Enact legislation clarifying the status of volunteers
- Enact basic laws for registration and operation of NGOs
- Legislation to set standards and procedures for government contracting with NGO social service providers.
- Improve implementation of existing legal framework through reform of administrative structures.
- Enact legislation to require higher accountability and performance standards by social service NGOs.
- Others\_\_\_\_\_

12. Thinking now of the overall relationship between the NGO sector and Government, including general attitude, funding, implementation of laws, openness to dialogue, and transparency, how would you rate that relationship in your country?

- a. Very Negative   b. Somewhat Negative   c. Neutral   d. Somewhat positive   e. Very Positive.

Comment:

13. Think now of the level of leadership and organization in the NGO sector in your country. How would you **rate the capacity** of the NGO sector to advocate and dialogue with government on laws, policies and other issues of concern to the NGO sector in general in your country.

- a. no capacity   b. Very little capacity   c. Neutral   d. Moderately good   e. Excellent

14. Think now of your NGO. In the last two years, have you needed legal advice and/or representation on an issue concerning your NGO?

- a. Yes  
b. No  
c. Don't Know/Remember

15. (IF YES) Who did you go to for legal advice/services?

- a. General Lawyer   b. Lawyer with special training in NGO law   c. No One   d. Don't know

Comment:

16. Think now of the long term sustainability of the NGO sector in your country, especially after foreign assistance ends. Recognizing that individual NGOs will come and go, how would you rate the overall sustainability of the sector?

- a. Not sustainable, most will collapse  
b. Some strong NGOs will survive  
c. Neutral  
d. Some disruption, but many will find a way to work  
e. The sector is strong and will get stronger

17. With foreign support, NGO leaders have been able to establish contacts and participate in a variety of international and regional programs and networks. Thinking of your country, please tell us how important it is for the NGOs in your country to sustain regional and international connections.

Please circle the statement closest to your views

- a. These kinds of regional and international connections are no longer of any value.  
b. We are becoming part of Europe, and no longer need direct connections with other country NGOs.  
c. These kinds of connections are interesting and somewhat useful, but not critical to the further development of NGOs in my country.  
d. Regional and international linkages are very important to the continued development of NGOs in my country.

**Annex V**

USAID Mission Questionnaire

**USAID MISSION SPECIAL EVALUATION QUESTIONS**

International Center for Not for Profit Law

November 22, 2005

**CONFIDENTIAL – NO ATTRIBUTION**

**ICNL Evaluation: Mission Special Questionnaire**

USAID Mission \_\_\_\_\_ Name: \_\_\_\_\_

Position in Mission \_\_\_\_\_ Date: \_\_\_\_\_

1. Examine the responses below. How would you rate the level of development of a functional legislative framework for the formation, registration, and operations of Not for Profit Organizations (NPOs) . (circle one)
  - a. Legislative framework is very restrictive and limiting
  - b. Legislative framework has serious flaws, but does allow for NPOs to function.
  - c. Legislative framework is positive, but needs some revision.
  - d. Legislative framework is very positive with little need for change at present
  - e. Don't know

Please explain your choice. What, if any, are the major issues with the legislative framework or with the implementation of that framework?. Please be specific as possible.

2. How would you rate the work of ICNL in helping to develop a sound legislative framework for NPOs in your country? (circle one)
  - a. ICNL has had very little impact on the development of NPO law in this country.
  - b. ICNL has been somewhat useful in the development of NPO law in this country.
  - c. ICNL has played an important role in the development of NPO law in this country.
  - d. ICNL has played an essential and critical role in the development of NPO law in this country
  - e. Don't know/can't say

Please elaborate on your response above with specific evidence, examples, and reasons for your assessment.

3. How would you rate the capacity of the NPO sector leadership to represent and advocate for the sector in discussions with government on issues of NPO law, regulation and funding policy? (Please circle the answer which best fits your view):
- a. NPO sector is very weak in this kind of capacity and has no effective leadership.
  - b. NPO sector as a whole has some strong leaders, but very little organizational coherence to advocate for the sector as a whole.
  - c. NPO leadership has begun to organize and have demonstrated ability to engage with government on sector issues.
  - d. NPO leadership is well organized and should be able to effectively represent sector wide interests with government.
  - e. Don't know.

Please elaborate on your answer with specific examples, evidence or reasons for your assessment.

4. With respect to capacity building, how would you rate ICNL's role? (circle one below)
- a. ICNL has not been involved with building capacity for the NPO sector to advocate for better laws, regulations and policies.
  - b. ICNL has made some effort through trainings, workshops and consultations, but with little effect.
  - c. ICNL's trainings, workshops and consultations here are beginning to have an impact on the sector's capacity to engage with government on issues of law, regulations, and policy.
  - d. ICNL's trainings, workshops and consultations have resulted in substantial improvement in the capacity and organization of the NPO leadership here.
  - e. The NPO leadership sector here is very strong and requires little further assistance from the outside.
  - f. Don't know/ can't say.

Please elaborate on your response with examples, evidence or further explanation.

5. With respect to the USAID legacy, if your mission were to close down within the next six months, how would you rate the future of the NPO sector in this country? (Please circle the response that is closest to your view.)
- a. Without USAID grants and technical assistance, the NPO sector would come close to collapsing.
  - b. Other donors, including the EU, other bi-laterals, and private foundations would fill the gap.
  - c. Many NPOs would survive, primarily through government sponsored grants and contracts for service delivery.
  - d. Local level NPOs would survive at a low level, with some national social service NPOs, but Advocacy and Public Interest NPOs would not.

- e. There would be a major shakeout of weak organizations, but the strong NPOs would find ways to keep going through economic activities and fees for services.
- f. Don't know/can't say.

Please elaborate on your response.

- 6. If your Mission were to close down in the next 6 months, what would be your view with respect to finding some way to continue to support the work of ICNL? (Please circle one.)
  - a. There is no particular reason to provide financing for a continuation of ICNL's involvement after USAID closeout.
  - b. It would be useful to continue ICNL's work, but that is true of several other US organizations; it is just not realistic to expect continued financial support for ICNL alone.
  - c. Local NPOs and the government would continue to benefit a lot from ICNL's unique comparative advantage here, but there is no way USAID could continue its financial support.
  - d. ICNL's work here is vitally important to the development of the NPO sector; this is essential to the long term viability of democratic governance here; therefore some way needs to be found to sustain ICNL's engagement even if there is no Mission.
  - e. It is in the US interest and in the interests of the host countries NPO sector that ICNL continue to be an important ally to NGO development here and elsewhere in this region; a USAID regional program fund should be set up for this purpose.
  - f. Don't Know/can't say.

Please elaborate on your response above with specific examples or other reasons why you feel the way you do on this question.

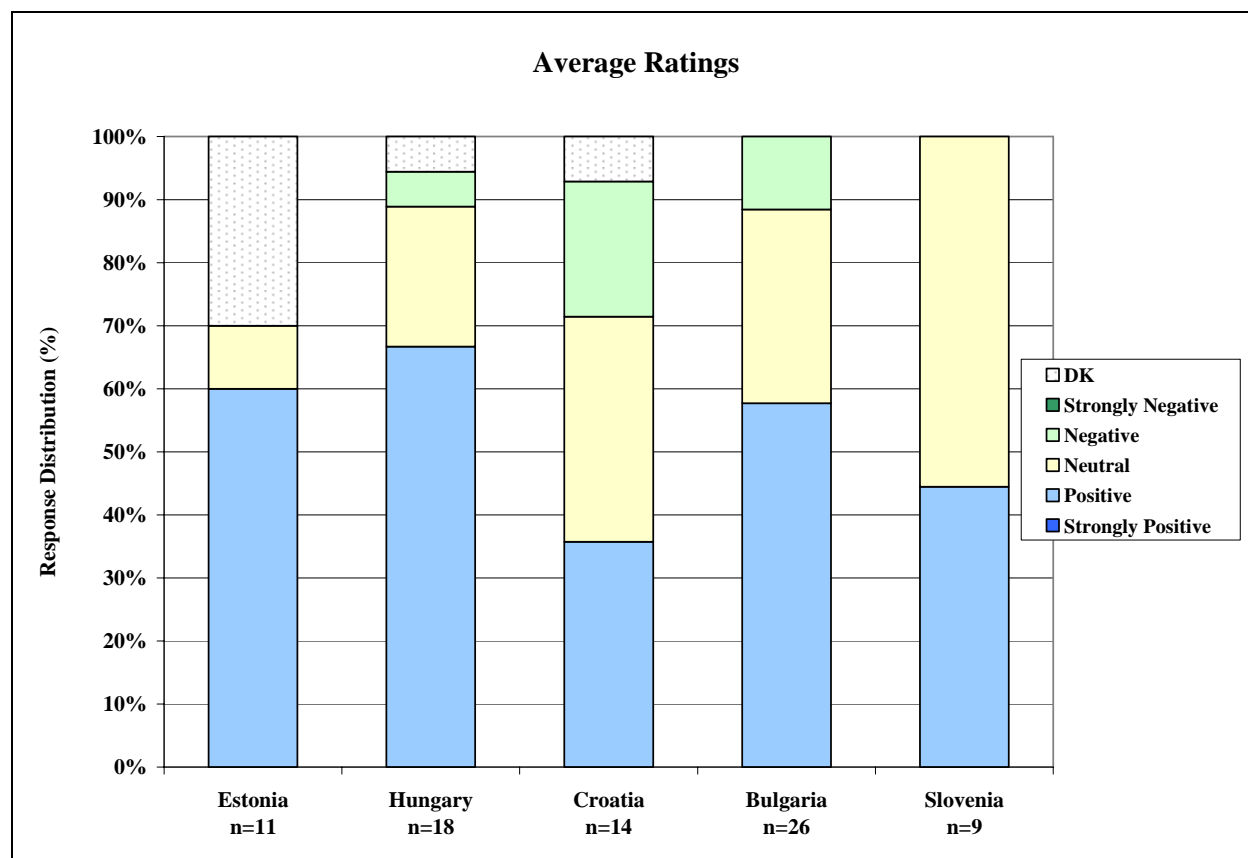
Thank you. Please return the completed form as an attachment to Monique Nowicki by COB Nov. 28, 2005. [mnowicki@usaid.gov](mailto:mnowicki@usaid.gov)



## Annex VI

### Data Tables

The following chart represents the aggregate country-level responses.



The table below shows USAID NGO Sustainability Index, which began in 1997 and incorporates aspects of legal environment, financial viability, organizational capacity, public image, infrastructure, advocacy, and service provision (USAID 1997-2004); scores run from 7 (worst) to 1 (best). Note the gap between new EU members and EU hopefuls at the beginning of the timeframe, as well as how it closes in later years.

